

NEWS RELEASE

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NC CONSUMERS WIN RIGHT TO THEIR DAY IN COURT ***State Supreme Court Strikes 'Unconscionable' Arbitration Clause***

The North Carolina Supreme Court late last week struck down the portion of a consumer loan contract that roped many consumers into dubious credit insurance premiums then made it impossible for them to vindicate their legal rights.

Ruling in *Tillman v. Commercial Credit, Inc.*, the Court held – as Public Justice had urged in its *amici* brief – that the arbitration clause was so unfair that it was "unconscionable" and could not be enforced.

The North Carolina Justice Center and the Financial Protection Law Center joined Public Justice in the *amici* brief.

At the heart of the case was the Commercial Credit's practice of selling so-called "credit insurance," which yielded large rewards for the company but provided little or no benefit to the consumer. Typically, sub-prime lenders sell credit insurance in conjunction with real estate loans.

In the case of plaintiff Fannie Mae Tillman, Commercial Credit attached expensive credit life insurance and credit disability insurance premiums to her loan without her knowledge. When Ms. Tillman and other plaintiffs filed a class action suit challenging the practice, Commercial Credit moved to ban class actions and compel arbitration on a case-by-case basis, requiring significant fees along the way. The trial court rejected the company's motion. Commercial Credit's appeal culminated in last week's ruling.

"The Court's thoughtful opinion joins with the majority of courts around the country in holding that corporations can't rig their arbitration clauses to be a get-out-of-jail free card," said F. Paul Bland, staff attorney with Public Justice. "Commercial Credit wasn't satisfied to just force its customers into arbitration, it also insisted upon structuring the arbitration clause in a way that would predictably make it impossible for consumers to enforce their rights under the state's consumer protection laws."

Commercial Credit had asked the Court to strike only parts of the arbitration clause, but to enforce the rest of it. The Court refused to help re-write the defective and illegal contract terms, however, and struck the entire arbitration clause.

"North Carolina lawmakers have a proud history of passing laws that make life tough on predatory lenders," said Carlene McNulty, staff attorney at the North Carolina Justice Center. "The court's decision ensures that corporations can't force consumers to give up those rights in the fine print of consumer contracts."

The decision is significant not only for consumers in the Tar Heel State, but throughout the country. As more and more courts are considering arbitration clauses that ban class actions and include other provisions designed to discourage consumers from bringing claims in arbitration, many lawyers and academics throughout the U.S. have eagerly awaited the Court's decision in this case.

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