

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DAVID C. AND HOLLY E. McLEAN,
et al.,

Plaintiffs,

v.

FIRST HORIZON HOME LOAN
CORPORATION (f/k/a McGUIRE
MORTGAGE COMPANY),

Defendant.

Case No. 00CV-228530

Division 28

**CHALLENGES TO DETERMINATIONS
OF SETTLEMENT ADMINISTRATOR**

Pursuant to the parties' Settlement Agreement, Plaintiffs and Class Counsel, for themselves and on behalf of all affected Class Members, do hereby challenge the following determinations of the Settlement Administrator, as first provided to Plaintiffs and Class Counsel on September 4, 2007:

A. Borrower Deceased; No Documentation

The Settlement Administrator has determined that a number of claims should be denied on the grounds that a borrower is deceased and that a representative of the deceased failed to submit a Valid Claim Form. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A, attached. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.

2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

B. Borrower/Co-Borrower Did not Sign

The Settlement Administrator has determined that a number of claims should be denied on the grounds that a borrower or co-borrower failed to sign the Claim Form, and thus, submit a Valid Claim Form. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of

any discrepancies with regard to the purported lack of documentation.

2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

C. Loan Date Differs Between Original List and Damages List

The Settlement Administrator has determined that a number of claims should be denied on the grounds that the loan date differs between the original mailing list(s) and damage list(s) that Class Counsel provided. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the

Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.

2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt from a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. If any disparity between the loan dates exists, the disparity can and will be corrected and is not material or such that an otherwise valid claim or Claim Form can be denied for this reason.
5. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

D. Claimant's Name Does not Appear on Damage Listings

The Settlement Administrator has determined that a number of claims should be denied on

the grounds that the name of the person submitting a claim did not appear on the damage lists that Class Counsel provided. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.
2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The fact that the name of the person submitting a claim may not appear on the damage list(s) that Class Counsel provided is not material or such that an otherwise valid claim or Claim Form submitted by that person can be denied. A person's status as a Class Member is determined by the facts, not by whether his or her name appears on the damages lists.
5. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a

valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

E. Claimant's Name does not Appear on Original Lists

The Settlement Administrator has determined that a number of claims should be denied on the grounds that the name of the person submitting a claim did not appear on the original lists that Class Counsel provided. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.
2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.

4. The fact that the name of the person submitting a claim may not appear on the original list(s) that Class Counsel provided is not material or such that an otherwise valid claim or Claim Form submitted by that person, can be denied. A person's status as a Class Member is determined by the facts, not by whether his or her name appears on the original list(s).
5. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

F. Other Claims – Different Payoff Dates

The Settlement Administrator has determined that a number of claims should be denied on the grounds that a borrower has submitted “other claims” having different loan payoff dates, but does not explain what this means. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.
2. The Settlement Administrator did not timely provide Class Counsel with a copy of

the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.

3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The fact that a borrower may have other claims or a different loan payoff date is not material or such that the Settlement Agreement can deny or partially deny the claim(s).
5. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

G. Borrower Didn't Answer Question #9

The Settlement Administrator has determined that a number of claims should be treated as "Bankruptcy Loans" and/or denied or partially denied on the grounds that the borrower(s) did not answer Question No. 9 on the Claim Form. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. Each of these determinations is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.
2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator's determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The fact that a borrower failed to answer Question No. 9 on the Claim Form does not make the borrower's loan a "Bankruptcy Loan" under the Settlement Agreement or, in and of itself, allow the Settlement Administrator to deny or partially deny the claim.
5. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

H. Borrower Said They Filed Bankruptcy

The Settlement Administrator has determined that a number of claims should be treated as “Bankruptcy Loans” and/or denied or partially denied on the grounds that the borrower(s) stated that they had filed for bankruptcy. Plaintiffs and Class Counsel have attempted to identify these particular claim denials on Schedule A. Each of these determinations is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the purported lack of documentation.
2. The Settlement Administrator did not timely provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims, making it impossible for Plaintiffs and Class Counsel to timely evaluate the Settlement Administrator’s determinations and/or correct or amend the claim submissions as contemplated by the Settlement Agreement.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determinations. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The fact that a borrower filed bankruptcy does not make the borrower’s loan a “Bankruptcy Loan” for under the Settlement Agreement.
5. The fact that a trustee did not file a Claim Form or a Valid Claim Form does not preclude a borrower from submitting a Valid Claim Form and recovering the entire Settlement Benefit due.

6. The determination to deny these claims is based upon an immaterial omission and/or obvious mistake that do/does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

I. Trustee's Portion of Settlement Benefit

The Settlement Administrator has determined that a bankruptcy trustee is entitled to a specified portion of the Settlement Benefit due for certain loans. Plaintiffs and Class Counsel have attempted to identify these particular determinations by the Settlement Administrator on Schedule

A. Each of these determinations is challenged on the following grounds:

1. The determination by the Settlement Administrator of any trustee's share is not determinative of who, as between the borrower and trustee, is entitled to receive the Settlement Benefit since the borrower may be entitled to all or a larger portion of the Benefit due as calculated on the Damage Claims Listing(s).
2. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any determinations made with regard to the trustee's portion of any particular claim.
3. The Settlement Administrator has yet to provide Class Counsel with a copy of the Claim Forms and claim submissions for these particular claims.

For the foregoing reasons, the determinations of the Settlement Administrator should be

rejected and each of the subject claims evaluated to determine who, as between the borrower and trustee, is entitled to receive the Settlement Benefit.

J. Late Claims

The Settlement Administrator has determined that a number of claims should be denied on the grounds that they were not timely filed. Plaintiffs and Class Counsel have attempted to identify these particular claims on Schedule B. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the claims and/or claim forms.
2. The Settlement Administrator has failed to provide Class counsel with the requisite explanation of the basis for the determinations.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determination. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be late or invalid.
4. The determination to deny these claims is based upon an immaterial omission or obvious mistake that does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed to be timely and valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or resubmit their prior claim submission(s).

K. Unspecified Denials

The Settlement Administrator has determined that a number of claims should be denied but has given no explanation or reason (or no sufficient reason) for the denial. Plaintiffs and Class Counsel have attempted to identify these particular claims on Schedule A. The denial of each of these claims is challenged on the following grounds:

1. The Settlement Administrator did not comply with its duties as specified in the Settlement Agreement, including, without limitation, paragraph 2.34, and failed to timely analyze and match the subject claim submissions and notify Class Counsel of any discrepancies with regard to the claims and/or claim forms.
2. The Settlement Administrator has failed to provide Class counsel with the requisite explanation of the basis for the determinations.
3. The Settlement Administrator had seven (7) days from its receipt of a claim submission to make the subject determination. Having failed to do so, the subject claims and Claims Forms cannot be deemed to be invalid.
4. The determination to deny these claims is based upon an immaterial omission and/or obvious mistake that do/does not preclude an otherwise valid Claim Form from being a valid Claim Form under the Settlement Agreement.

For the foregoing reasons, the determinations of the Settlement Administrator should be rejected and each of the subject claims should be deemed to be valid under the Settlement Agreement. Alternatively, the affected Class Members should be given additional time to correct and/or amend their prior claim submission(s).

L. Remaining Denials

Given the Settlement Administrator's belated determinations and failure to timely analyze

and match the claims submissions and to notify Class Counsel of any discrepancies, and given the Settlement Administrator's failure to provide Class Counsel with a copy of any Claim Forms that the Settlement Administrator determined not to be Valid Claim Forms as required by paragraph 2.34 of the Settlement Agreement, Plaintiffs and Class Counsel are compelled to challenge any and all other denials by the Settlement Administrator, for whatever reason, including, without limitation, any and all determinations that any Claim Form does not constitute a Valid Claim Form.

Dated: September 5, 2007

WALTERS BENDER STROHBEHN
& VAUGHAN, P.C.

By: 

R. Frederick Walters -Mo. Bar 25069
Kip D. Richards - Mo. Bar 39743
David M. Skeens -Mo. Bar 35728
2500 City Center Square
1100 Main Street
P.O. Box 26188
Kansas City, MO 64196
(816) 421-6620
(816) 421-4747 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above and foregoing document was hand delivered this 5th day of September 2007, to:

Richard L. Martin
Desarae Harrah
MARTIN, LEIGH & LAWS, P.C.
Suite 400
1044 Main Street
Kansas City, MO 64105
(816) 221-1044 (fax)

Mark A. Olthoff
Shughart Thomson & Kilroy, P.C.
1700 Twelve Wyandotte Plaza
120 W. 12th Street
Kansas City, Missouri 64105-1929
(816) 421-0509 (fax)
Attorneys for Defendant

with a copy scanned and e-mailed at approximately 4:30 p.m to:

Thomas M. Hefferon
Adam M. Chud
Goodwin Procter LLP
901 New York Ave., NW
Washington DC 20007
(202) 346-4444 (fax)
Attorneys for Defendant



A handwritten signature in black ink, appearing to read 'Adam M. Chud', is written over a horizontal line.