

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,

Defendant.

Case No. 00CV-228530

Division 28

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND OF SETTLEMENT HEARING**

THIS NOTICE HAS BEEN MAILED TO YOU BECAUSE YOU OBTAINED A SECOND MORTGAGE LOAN, SECURED BY MISSOURI RESIDENTIAL REAL ESTATE, FROM MCGUIRE MORTGAGE COMPANY, FT MORTGAGE COMPANIES, OR FIRST HORIZON HOME LOAN CORPORATION BETWEEN NOVEMBER 16, 1994 AND APRIL 13, 2005 OR YOU PREVIOUSLY RECEIVED NOTICE OF THE CLASS CERTIFICATION IN THIS LAWSUIT. AS SUCH, YOU (AND ANY CO-BORROWER ON YOUR LOAN) MAY BE ENTITLED TO RECEIVE A "SETTLEMENT BENEFIT" IN CONNECTION WITH THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

***A Missouri court has authorized this Notice. This is not a solicitation from a lawyer.***

The amount of the Settlement Benefit to which you may be entitled is based on a number of factors, including the date on which you obtained your Missouri second mortgage loan, the type and amount of loan fees that were charged, the rate and amount of interest paid, the number of loans you obtained, and whether you filed bankruptcy.

Class Counsel currently estimates that the Settlement Benefit for most of the loans made before January 1, 1999 will be \$339.00 to \$54,162.00 per loan, with the average Settlement Benefit being \$10,171.00 per loan. The Settlement Benefit for most of the loans made on or after January 1, 1999 is currently estimated to be \$250.00 to \$4,353.00 per loan, with the average Settlement Benefit being \$773.00 per loan. You can determine what Class Counsel currently estimates the amount of your Settlement Benefit to be by adding up all of the allegedly illegal loan fees and all of the interest that you paid on your loan as of November 7, 2006, and multiplying that sum by the applicable percentage (approximately 77.68% for loans made before January 1, 1999 and 6.26% for loans made on or after that date). These amounts are estimates by Class Counsel, are presumed to be valid, but are subject to challenge and may be different. If there is a successful challenge, then the amount you may receive could be less, nothing, or more than the estimate shown.

**You must timely file a Claim to receive the Settlement Benefit payment to which you may be entitled. Claim Forms must be postmarked by May 31, 2007. Claims Forms postmarked after that date will not be accepted.**

#### **HOW TO FILE A CLAIM**

Completely fill out, sign and mail the Claim Form enclosed with this Notice on or before May 31, 2007 to:

**First Horizon Missouri Second Mortgage Loan Litigation  
Settlement Administrator  
P.O. Box 2086  
Birmingham, AL 35201-2086**

You can only file one (1) Claim Form per loan and **all** borrowers on the loan must sign the single Claim Form for that loan. If you obtained more than one second mortgage loan from McGuire Mortgage, FT Mortgage Companies, or First Horizon Home Loan Corporation between November 16, 1994 and April 13, 2005, you are entitled to file a Claim for **each** of your loans. However, you must complete, sign and mail a **separate** Claim Form to the Settlement Administrator for **each** of the loans. Extra blank copies of the Claim Form may be obtained by calling the Settlement Administrator, toll free, at 1-888-465-9207 or from Class Counsel at [www.wbsvlaw.com](http://www.wbsvlaw.com) or by e-mailing [mcleansettlement@wbsvlaw.com](mailto:mcleansettlement@wbsvlaw.com), or by calling toll free 1-800-330-2581.

If the Settlement is approved, and you do not exclude yourself from the Settlement, you will be bound by the Settlement, the Agreement and the Releases whether or not you file a Claim and whether or not your Claim is approved.

#### **THE LAWSUIT AND SETTLEMENT**

On February 21, 2007, the Circuit Court of Jackson County, Missouri, Division 28, gave preliminary approval to the settlement in *David C. and Holly E. McLean et al. v First Horizon Loan Corporation (f/k/a McGuire Mortgage Corporation)* Case No. 00CV-228530, a class action lawsuit (the "Lawsuit"). The Lawsuit was filed by David and Holly McLean and Roger and Eugenia Jones as plaintiffs and representatives of a class of all persons who obtained second mortgage loans, secured by Missouri real estate, from McGuire Mortgage Company, FT Mortgage Companies, First Horizon Loan Corporation (hereinafter "McGuire/First Horizon) between November 16, 1994 and April 13, 2005 (the "Class Period").

The McLeans and the Joneses allege in the Lawsuit that McGuire/First Horizon violated the Missouri Second Mortgage Loans Act, RSMo §§ 408.231, et seq., (the "MSMLA") by charging, contracting for and/or receiving the following fees in connection with the Missouri second mortgage loans that McGuire/First Horizon made: (i) loan origination fees in excess of the limitations provided for in the Statute, (ii) loan discount fees, (iii) tax service fees, (iv) underwriting fees, (v) processing fees, (vi) document preparation fees, (vii) direct or indirect mortgage broker fees, (viii) express mail fees, (ix) flood certification fees, (x) payoff/delivery fees, (xi) verification of mortgage fees, and (xii) wire fees.

McGuire/First Horizon denies any wrongdoing and contends that its lending practices did not violate the MSMLA. You can review the court file or contact Class Counsel at the address listed at the end of this Notice for more details of the Lawsuit and to review or obtain copies of the many rulings that the Court has made.

Both the plaintiffs and McGuire/First Horizon have conducted a substantial pretrial investigation of their respective claims and defenses. There have been substantial proceedings in the Lawsuit. In 2002, the Court certified the case as a class action; you may already have received notice of the Lawsuit for that reason. Over the last several years, the Court has entered a number of orders in the Lawsuit, including orders that granted judgment in part for the McLeans (not the Joneses), that granted McGuire/First Horizon's request for a summary judgment on some claims and denied it on other claims, and that granted judgment in part for McGuire/First Horizon. In addition, as discussed below, a Special Master has recommended that the Court adopt certain preliminary orders that borrowers whose loans were made before 1999 be allowed to pursue claims and that borrowers whose loans were made after 1998 not be allowed to pursue their claims. There also have been a large number of depositions taken and documents exchanged, including loan files of second mortgage loans made by McGuire/First Horizon. In June 2005, the plaintiffs requested that the Court expand the claims in the Lawsuit to include a claim under the Missouri Merchandising Practices Act, §§ 407.010 RSMo, *et seq.* The Court denied that request, but Class Counsel has indicated that this claim and other claims arising in connection with the origination of the loans may be viable and might be the subject of additional litigation.

The parties have discussed settlement as a possible resolution of this case and of all potential disputes between McGuire/First Horizon and the Class, and have reached an agreement that will settle all such matters if it is approved by the Court. This agreement is referred to in this Notice as the "Settlement." The Settlement is documented in a Settlement Agreement, and attachments, which have been filed with the Court. The Court has preliminarily approved the Settlement as fair, reasonable and adequate. On June 7, 2007, the Court will conduct a "Fairness Hearing" and decide whether the Settlement should be finally approved. UNTIL THE COURT ACTS, THE SETTLEMENT IS NOT FINAL OR BINDING.

### **SETTLEMENT TERMS**

The following is only a summary of some of the terms of the Settlement. For more information, you can obtain a complete copy of the Settlement Agreement from the Settlement Administrator and/or Class Counsel at the addresses, websites, and phone numbers given at the end of this Notice. Except as defined in this Notice, the capitalized terms used in this Notice are defined in the Settlement Agreement.

For purposes of this proposed Settlement only, a Settlement Class defined below, has been conditionally certified. This does not mean that Plaintiffs would be successful if the case went to trial, and this Notice and the proposed Settlement do not imply that McGuire/First Horizon is liable to Plaintiffs or to any member of the Class or that a class action would be proper in the absence of a settlement. Furthermore, if this proposed

Settlement is not finally approved or is withdrawn at any time, for reasons detailed in the Settlement Agreement, the parties have agreed to return the Lawsuit to its same status as before the Settlement Agreement was signed.

1. **The Settlement Class.** The Court has preliminarily approved a Settlement Class for purposes of the Settlement. The persons who are members of the "Settlement Class" are at times referred to in this Notice as "Class Members." Class Members will be bound by the Settlement unless they timely exclude themselves from the Settlement. The Settlement Class is comprised generally of those persons,

- (a) who obtained a second mortgage loan secured by a Deed of Trust on Missouri real property from McGuire Mortgage Company, FT Mortgage Companies, or First Horizon Home Loan Corporation between November 16, 1994 and April 13, 2005, whose loan was made at an interest rate in excess of the general Missouri usury rate in effect at the time of the loan, and for which one or more of the following fees was charged, contracted for or received in connection with the loan: a loan origination fee in excess of the amount permitted by MSMLA, § 408.233.1(5) at the time of the loan, a loan discount fee, a tax service fee, an underwriting fee, a processing fee, a document preparation fee, a direct or indirect mortgage broker fee, an express mail fee, a flood certification fee, a payoff/delivery fee, a verification of mortgage fee, and/or a wire fee, or

- (b) to whom the prior Notice of Class Action Lawsuit was mailed in this case. The Notice of Class Action Lawsuit was mailed out after the Court certified the liability class in the Lawsuit in December 2002.

Those persons who previously excluded themselves from the liability class in the Lawsuit are not Class Members and cannot participate in or be bound by the Settlement. The exact definition of the Class is contained in the Settlement Agreement on file with the Court.

2. **Settlement Benefit Amount.** If the Court approves the proposed Settlement at the Fairness Hearing scheduled for June 7, 2007, McGuire/First Horizon has agreed to make available to the Settlement Class a gross settlement "Benefit Amount" of \$36.3 million. The Benefit Amount is allocated as follows: (a) \$33.6 million to settle the claims related to the "Pre-Merger" loans (loans made before January 1, 1999); and (b) \$2.7 million to settle the claims related to the "Post-Merger" loans (loans made on or after January 1, 1999). The allocation of the Benefit Amount is necessary because McGuire Mortgage, by merger, became a wholly-owned operating subsidiary of First Tennessee Bank N.A., a national bank, on January 1, 1999. As a result, the loans that McGuire/First Horizon made before January 1, 1999 were made subject to the MSMLA, while loans that McGuire/First Horizon made on or after January 1, 1999 are arguably exempted from the MSMLA under federal banking law. What this means is that if you obtained your loan on or after January 1, 1999, your Settlement Benefit will be much less than the Settlement Benefit available to the borrowers who obtained their loans before January 1, 1999. For more details of the reasons for treating the Pre- and Post-Merger Loans

differently for purposes of the Settlement and the decisions by the Court and Special Master to the effect that the Post-Merger Loans are exempted from the MSMLA and that the borrowers who obtained those loans would likely be prohibited from recovering anything at trial, see “REASONS FOR SETTLEMENT” section below.

3. **Settlement Benefit – Pre-Merger Loans.** If you obtained your loan before January 1, 1999, you may be entitled to receive a Settlement Benefit from the \$33.6 million allocated for the Settlement of the Pre-Merger Loans. Your Settlement Benefit will be calculated as follows (unless your loan is a Special Category Loan or Bankruptcy Loan described in paragraphs 5 and 6 below, or is successfully challenged).

The Settlement Benefit will be determined by multiplying (a) the sum of all of the allegedly illegal loan fees described in paragraph 1(a) above, plus all of the interest paid on the loan (the “Calculated Sum”) as shown on the “Damage Claim Listings” (described below) by (b) a fraction that has as its numerator (top number) the “Net Distributable Pre-Merger Fund” and has as its denominator (bottom number) the total of all the “Calculated Sums” for all Pre-Merger Loans shown on the Damage Claim Listings.

The “**Calculated Sum**” for your loan is the sum or total of all the allegedly illegal loan fees described in paragraph 1(a), plus all of the interest paid on your loan as of November 7, 2006. The Calculated Sums were calculated using loan files, public records, data furnished by McGuire/First Horizon and all other available data including what Class Counsel has determined to be the likely date of your last loan payment, with the help of experts in the field of finance and economics. You can see the Calculated Sum for your loan using the Damage Claim Listings.

The “**Damage Claim Listings**” contain Class Counsel’s estimate of the Settlement Benefit to be made available by McGuire/First Horizon for your loan. The Damage Claim Listings also show the date of your last loan payment and how the “Calculated Sum” for each of the Class Loans was derived. You can access the Damage Claim Listings and see the Calculated Sum for your loan(s) at [www.wbsvlaw.com](http://www.wbsvlaw.com) (the website of Class Counsel).

The “**Net Distributable Pre-Merger Fund**” is calculated by subtracting the following from the \$33.6 million Pre-Merger Settlement Fund: (a) a proportionate share (.92562) of the court-awarded and approved expenses of Class Counsel; (b) a proportionate share (.92562) of the court-awarded and approved attorney’s fee award to Class Counsel; (c) a proportionate share (.92562) of any costs of administration of the settlement in excess of \$200,000.00; and (d) the total of all of the \$250.00 payments to be made for the “Special Category Loans” within the Pre-Merger Subclass, and which are described in paragraph 5 below.

Class Counsel currently estimates that Class Members who obtained a Pre-Merger Loan will be entitled to be paid a Settlement Benefit of approximately 77.68% of the Calculated Sum for that loan. The Settlement Benefits for Pre-Merger Loans will

vary depending on the circumstances of each loan but will likely range from \$339.00 to \$54,162.00, with the average Benefit being \$10,171.00. These amounts are estimates by Class Counsel, are presumed to be valid, but are subject to challenge and may be different. If there is a successful challenge, then the amount you may receive could be less, nothing, or more than the estimate shown.

4. **Settlement Benefit – Post-Merger Loans.** If you obtained your loan on or after January 1, 1999, you may be entitled to receive a Settlement Benefit from the \$2.7 million to be allocated for the settlement of the Post-Merger Loans. Your Settlement Benefit will be calculated as follows (unless your loan is a Special Category Loan or Bankruptcy Loan described in paragraphs 5 and 6 below, or is successfully challenged).

The Settlement Benefit will be determined by multiplying (a) the sum of all of the allegedly illegal loan fees described in paragraph 1(a) above, plus all of the interest paid on the loan (the “Calculated Sum”) as shown on the “Damage Claim Listings” (described below) by (b) a fraction that has as its numerator (top number) the “Net Distributable Post-Merger Fund” and has as its denominator (bottom number) the total of all the “Calculated Sums” for all Post-Merger loans shown on the Damage Claim Listings.

The “**Calculated Sum**” for your loan is the sum or total of all the allegedly illegal loan fees described in paragraph 1(a), plus all of the interest paid on your loan as of November 7, 2006. The Calculated Sums were calculated using loan files, public records, data furnished by McGuire/First Horizon and all other available data including what Class Counsel has determined to be the likely date of your last loan payment, with the help of experts in the field of finance and economics. You can see the Calculated Sum for your loan using the Damage Claim Listings.

The “**Damage Claim Listings**” contain Class Counsel’s estimate of the Settlement Benefit to be made available by McGuire/First Horizon for your loan. The Damage Claim Listings also show the date of your last loan payment and how the “Calculated Sum” for each of the Class Loans was derived. You can access the Damage Claim Listings and see the Calculated Sum for your loan(s) at [www.wbsvlaw.com](http://www.wbsvlaw.com) (the website of Class Counsel).

The “**Net Distributable Post-Merger Fund**” is calculated by subtracting the following from the \$2.7 million Post-Merger Settlement Fund: (a) a proportionate share (.07438) of the court-awarded and approved expenses of Class Counsel; (b) a proportionate share (.07438) of the court-awarded and approved attorney’s fee award to Class Counsel; (c) a proportionate share (.07438) of any costs of administration of the settlement in excess of \$200,000.00; and (d) the total of all of the \$250.00 payments to be made for the “Special Category Loans” within the Post-Merger Subclass, and which are described in paragraph 5 below.

Class Counsel currently estimates that Class Members who obtained a Post-Merger Loan will be entitled to be paid a Settlement Benefit of approximately 6.26%

of the Calculated Sum for that loan. The Settlement Benefits for Post-Merger Loans will vary depending on the circumstances of each loan but will likely range from \$250.00 to \$4,353.00, with the average Benefit being \$773.00. These amounts are estimates by Class Counsel, are presumed to be valid, but are subject to challenge and may be different. If there is a successful challenge, then the amount you may receive could be less, nothing, or more than the estimate shown.

5. **Settlement Benefit – “Special Category Loans.”** McGuire/First Horizon has agreed to make available and pay a Settlement Benefit of \$250.00 to those Class Members who obtained a loan, regardless of when the loan was made, even if the loan was not at a high interest rate and/or had none of the challenged loan fees, and even if the Settlement Benefit computed for the loan is less than \$250.00. Thus, you will receive \$250.00 under the Settlement even if (a) the interest rate charged for your loan was less than the Missouri usury rate at the time the loan was made, or (b) the interest rate charged for your loan was greater than the Missouri general usury rate but you were not charged any of the loans fees described in paragraph 1 above, or (c) the Settlement Benefit for your loan is less than \$250.00, or (d) you previously received notice of this case but did not have a second mortgage loan.
6. **“Bankruptcy Loans.”** Regardless of when you received your loan, if you filed for bankruptcy protection after you received the loan, your rights may be different. If you filed bankruptcy after you received your loan and you still have the capacity and/or standing to assert your claim against McGuire/First Horizon, and you submit a valid Claim Form, McGuire/First Horizon has agreed to make available and pay the Settlement Benefit otherwise applicable to the loan as provided in paragraphs 3 or 4 above. If, however, you no longer have the capacity and/or standing to assert your claim, then McGuire/First Horizon has agreed to make available and pay to you a minimum Settlement Benefit of \$250.00, and the person with legal capacity (for example, a bankruptcy trustee) will be entitled to file a Claim for the difference between the \$250.00 minimum benefit and the amount you would have otherwise been entitled to receive under paragraphs 3 or 4 above if no bankruptcy had been filed; however, if your loan is a “Special Category Loan” as defined in paragraph 5 above, the minimum Settlement Benefit is \$25.00 and the person with legal capacity (for example, a bankruptcy trustee) will be entitled to file a Claim for the balance of the Settlement Benefit due, which is \$225.00. You must provide the Class Notice to your bankruptcy attorney and bankruptcy trustee. You should consult with a bankruptcy attorney to determine if you have the legal capacity and/or standing to assert a claim.
7. **Documents/Release of Information.** By submitting a Claim Form, you are agreeing to provide, upon request, all of the documents you have concerning the payments made on your loan. This includes any bills, invoices, receipts, payoff statements, IRS Form 1098’s (Mortgage Interest Paid), and cancelled checks. You may be asked to produce these payment records in connection with the challenge process described in the next paragraph. Failure to do so may result in the denial of the Settlement Benefit available to you under the Settlement. Your right to

make a Claim does not depend on whether you still have any loan payment documents in your possession. You may make a Claim whether or not you have any such documents; but if you do have such documents, you must keep them in a safe place as you may be required to provide them to McGuire/First Horizon. In addition, in order to submit a valid Claim, you must authorize McGuire/First Horizon to obtain the same type of loan payment information related to your second mortgage loan from third parties, other than the IRS or any other federal or state taxing authority, but including the companies to which you made your loan payments. The Claim Form, when signed, will serve as a written authorization and consent by you for the release of your credit report (for informational purposes) to McGuire/First Horizon for processing your claim and for the release of other loan information to McGuire/First Horizon. If necessary, you may have to provide a separate, similar authorization at a later date as a part of the claims process. McGuire/First Horizon has agreed to keep confidential all of the documents and information it receives. McGuire/First Horizon can only use the documents and information to verify or challenge your Claim.

8. **Challenges.** Class Counsel has estimated the amount of each Settlement Benefit to be made available for each loan using the formulas and data described above. McGuire/First Horizon has agreed that the Damage Claims Listings and the “Calculated Sums” from which the Settlement Benefits are determined are presumptively valid for purposes of the Settlement. If the “Calculated Sum” for your particular loan as shown on the Damage Claim Listings, or as evidenced by the information obtained from your Claim Form, is \$7,500.00 or more, then McGuire/First Horizon has the right under the Settlement to challenge the amount of your Claim. The challenge, if successful, would reduce the amount of the Settlement Benefit to which you may be entitled.

McGuire/First Horizon also may challenge your Claim if it is incomplete, if it is not signed by each borrower who was obligated on the original loan, if it contains untrue statements, or if it is otherwise not in compliance with the requirements set forth in the Settlement Agreement. As a member of the Settlement Class, you also have the right to challenge the amount of the Calculated Sum or Settlement Benefit if you think there is an error. If your claim is challenged, you may be required to cooperate by providing all requested documentation and responding promptly to other reasonable requests for information. There may be a hearing on the challenge (at which you may appear in person or by telephone). For more details about challenges and how challenges will be resolved, see the Settlement Agreement.

9. **Attorney’s Fees and Expenses.** Class Counsel has pursued this litigation on a contingent basis and has paid all the costs of the Action. These lawyers have not yet been paid or received any of their expenses. As a part of the Settlement, the Court will determine whether Class Counsel is entitled to an award of reasonable attorney’s fees and reimbursement for expenses and costs. Class Counsel intend to apply for an award of reasonable attorneys’ fees in the amount of \$12 million and will seek reimbursement of expenses and costs in the amount of \$300,000. McGuire/First Horizon has agreed that it will not object to the award of attorneys’

fees, litigation expenses and court costs in these amounts. Any payment of attorneys' fees, litigation expenses and court costs must be approved by the Court. The awards will be paid from the "Benefit Amount," and allocated proportionately between the pre- and post-merger funds. The Settlement Benefit amounts have been estimated with the expectation that the Court will find them to be reasonable and award them to Class Counsel in accordance with applicable law.

10. **Incentive Awards.** Class Counsel intend to apply for, and McGuire/First Horizon will not object to, an incentive award in the amount of \$12,000.00 each to be made jointly payable to the class representatives, David and Holly McLean and Roger and Eugenia Jones. The incentive awards are compensation for the class representatives' years of service and expenses in acting as class representatives in the Lawsuit. Class Counsel also intend to apply for, and McGuire/First Horizon will not object to, an incentive award in the amount of \$1,000.00 for any Class Member who was deposed in the Lawsuit as compensation for his or her services and expenses. All of the incentive awards are in addition to the \$36.3 million Benefit Amount and will not affect the amount that any individual Class Member is entitled to receive. Payment of incentive awards also must be approved by the Court.
11. **Exclusion Requests.** McGuire/First Horizon may terminate the Settlement if the total number of Class Members who exclude themselves from the Settlement equals or exceeds the requisite number provided in the Settlement Agreement.
12. **Approval of Settlement.** The Settlement will become effective only if approved by the Court. If the Settlement is finally approved, the Court will enter a judgment that releases and discharges McGuire/First Horizon and certain other persons from certain claims which were or could be asserted against them. The release of McGuire/First Horizon and others is discussed in more detail below.

#### **REASONS FOR SETTLEMENT**

The Class Representatives and Class Counsel have agreed to the Settlement after considering, among other things, (i) the rulings to date and the risk of adverse or beneficial future rulings, (ii) the substantial benefits available to the Class under the terms of the proposed Settlement, (iii) the attendant risks and uncertainty of litigation, especially in complex litigation such as this, as well as the difficulties and delays inherent in such litigation, including the delay and uncertainty associated with any appeals following the disposition of the lawsuit at the trial court level, and (iv) the desirability of consummating the Settlement promptly to provide effective relief to the Settlement Class. The merits of the claims or defenses in the Lawsuit have not been finally resolved by the Court and remain subject to one or more appeals. McGuire/First Horizon has denied and continues to deny all charges of wrongdoing or liability against it arising out of or relating to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged. Nonetheless, McGuire/First Horizon has concluded that further litigation of the Lawsuit would be protracted and expensive and would not be in the best interest of McGuire/First Horizon and that it is desirable that the Lawsuit be resolved in the manner and upon the terms and conditions set forth in the Settlement Agreement.

Certain rulings of the Court are of particular importance to the Settlement and give rise to the need for making a distinction between the loans that McGuire Mortgage made before and after it merged with its affiliate, FT Mortgage Companies, and became the wholly-owned operating subsidiary of a national bank as of January 1, 1999. Given the merger and McGuire's status as an operating subsidiary of a national bank, McGuire/First Horizon asserted that federal banking laws "preempted" or replaced the MSMLA as the law that governed all of the loans that McGuire/First Horizon made on and after January 1, 1999 (the "Post-Merger Loans"). After extensive briefing and argument, the Special Master appointed in the case twice recommended that the Court enter a judgment dismissing as "preempted" by federal law the claims of those persons who obtained their loans from McGuire/First Horizon on or after January 1, 1999. The Court adopted the first of these recommendations (which concerned only one of the allegedly illegal loan fees), but had not yet adopted or rejected the second (which concerned the remainder of the allegedly illegal loan fees on which all the post-merger loan claims were based) when the parties agreed to settle the case in August 2006. If the Court had adopted the second recommendation (as it might have done given its prior ruling on the issue), the claims of those persons who obtained their loans on or after January 1, 1999 would have been dismissed from the case and those borrowers who obtained their loans on or after January 1, 1999 would not have likely recovered anything at trial. The Settlement provides these post-merger borrowers with a recovery when the circumstances were such that these borrowers would not likely have recovered anything if the case was tried. Also pending and undecided as of August 2006 was a motion to determine whether McGuire/First Horizon would have to pay the Class Members the interest they had been charged on the loans. The outcome of this motion could have affected materially, either way, the amount of the recovery by the Class. Given these and the other factors referenced above, including the uncertainties and additional delay to be occasioned by one or more appeals, the parties agreed that further litigation of the Lawsuit, which had then been on file for nearly six years, would continue to be protracted, expensive and contrary to the best interests of both sides. The parties thus agreed to the Settlement, including the allocation of the Benefit Amount between the Pre- and Post-Merger Loan claims. The allocation reflects the perceived relative merits and risks associated with the Pre- and Post-Merger Loan claims as they existed in August 2006.

### **YOUR OPTIONS**

The Court has scheduled a "Fairness Hearing" on June 7, 2007 at 9:00 a.m. at the Circuit Court of Jackson County, Missouri, Division 28, 308 W. Kansas, Independence, Missouri. At this Hearing, the Court will consider whether to give final approval to the Settlement. You are not obligated to attend the Fairness Hearing.

The purpose of the Fairness Hearing is to determine, among other things: (a) whether the terms of the Settlement are fair, reasonable and adequate, (b) whether the representative plaintiffs and Class Counsel are adequate and such that the Settlement Class should be finally certified, (c) whether Class Counsel are entitled to an award of attorney's fees, litigation expenses and/or court costs and, if so, in what amounts, (d) whether any incentive awards should be paid to the Class Representatives and those Class Members

who were deposed, and (e) whether a Final Order and Judgment should be entered dismissing the Lawsuit and all claims with prejudice as to all Class Members, except for those who timely and properly requested to be excluded from the Settlement.

The Court has the power to adjourn or reschedule the Fairness Hearing from time to time without further notice of any kind.

***Your Right to Appear, Intervene and/or Object***

If you do not file a timely written request for exclusion, you have the right to appear and/or enter an appearance so that you can argue at the Hearing yourself or through an attorney retained at your own expense. If you wish to appear you or your attorney must (i) file a Notice of Appearance with the Court Clerk no later than May 1, 2007; and (ii) serve a copy of the Notice of Appearance on Class Counsel and Counsel for McGuire/First Horizon using the following addresses:

*Class Counsel - R. Frederick Walters, David M. Skeens,  
and Kip D Richards  
Walters, Bender, Strohbehn & Vaughan, PC  
2500 City Center Square  
1100 Main Street  
P.O. Box 26188  
Kansas City, MO 64196  
(800) 330-2581  
(816) 421-6620  
(816) 421-4747 (fax)  
mcleansettlement@wbsvlaw.com*

*Counsel for McGuire/First Horizon - Mark A. Olthoff  
Shughart Thomson & Kilroy, PC  
Twelve Wyandotte Plaza Suite 1700  
120 W. 12<sup>th</sup> Street  
Kansas City, MO 64105  
(816) 421-3355  
(816) 374-0509 (fax)  
molthoff@stklaw.com*

If you do not file a timely written request for exclusion, you may also seek to intervene in the Lawsuit, personally or through an attorney retained at your own expense. A request to intervene in the Lawsuit must be in writing and reference *McLean v. First Horizon Home Loan Corp.*, Circuit Court of Jackson County, Missouri, Case No. 00CV-228530, and otherwise comply with the Missouri Rules of Civil Procedure and applicable law. A request to intervene must be filed no later than May 1, 2007 with the Court. You must also serve a copy of your motion to intervene on Class Counsel and Counsel for McGuire/First Horizon at the above addresses by May 1, 2007.

If you do not file a timely written request for exclusion, you also have the right to object to

the Settlement. Any objections must be in writing, filed no later than May 1, 2007 with the Clerk's Office, Circuit Court of Jackson County, Missouri, 308 W. Kansas, Independence, MO 64050. You must also mail a copy of your written objections to Class Counsel and Counsel for McGuire/First Horizon at the above address by May 1, 2007. The objections must reference *McLean v. First Horizon Home Loan Corp.*, Circuit Court of Jackson County, Missouri, Case No. 00CV-228530, and contain the following: (a) your name, address, and telephone number; (b) a statement that you object to the Settlement and an explanation for each objection; and (c) a certificate that you mailed a copy of the objections to Class Counsel and Counsel for McGuire/First Horizon. The objections must also include copies of any documents you want the Court to consider. If you fail to make your objections as required by the Settlement Agreement the objections will be waived.

Any Class Member who does not comply with these requirements shall be deemed to have waived any and all objections, requests for intervention, and rights to appear in and/or be heard at the Fairness Hearing, and in all other ways shall be forever barred from making any objection to the Settlement, from seeking to intervene in the Lawsuit, and from appearing in the Lawsuit and/or at the Fairness Hearing. If you do not object, seek to intervene, or state an intention to appear, or if you waive those rights by failing to comply with the Agreement, this Notice or the Court's Orders, you will still be bound by the Agreement and the Releases.

### ***Your Right to be Excluded from the Settlement***

You do not have to be included in the Settlement. If you exclude yourself from the settlement, you will **not** receive any payment and you will **not** be bound by any Final Order and Judgment that may be entered in this case. You will be free to pursue whatever legal rights you may have at your own risk and expense.

If you wish to exclude yourself from the Class, you must mail a written request for exclusion to the Settlement Administrator at P.O. Box 2086, Birmingham, AL 35201-2086. Requests for exclusion do not need to be in any particular form, except that the request must refer to the Lawsuit, *McLean v. First Horizon Home Loan Corp.*, Circuit Court of Jackson County, Missouri, Case No. 00CV-228530, and must state that you intend to "opt out" or request "exclusion" from the Class and must be signed and contain the full name, current address, and telephone number of the person requesting exclusion. The request for exclusion must include a statement that you and all other borrowers named on your promissory note are seeking exclusion; and your signature and the signature of all other borrowers named on the promissory note. If you are acting on behalf of another person or entity, your request for exclusion also needs to include documentation (such as a power of attorney) sufficient to show your authority to act on behalf of that person or entity.

Mail the letter with proper postage by first-class U.S. Mail to:

**First Horizon Missouri Second Mortgage Loan Litigation  
Settlement Administrator  
P.O. Box 2086  
Birmingham, AL 35201-2086**

The written request for exclusion must be mailed by first-class U.S. Mail, postage prepaid, postmarked on or before May 1, 2007. If the request for exclusion is not timely mailed, you will be included in the Class and you will be eligible to receive a settlement benefit. You also will be legally bound by the proposed Settlement (if it is approved), including the provisions releasing McGuire/First Horizon and certain parties, as more fully described in the Settlement Agreement.

If you want to receive a Settlement Benefit, do not request to be excluded from the Settlement.

### **RELEASE OF CLAIMS**

If the Settlement receives final approval from the Court and you do not opt out, you will release and discharge all claims and rights, known and unknown, that concern the origination of any second mortgage loan made during the Class Period or that were raised or could have been raised in the Lawsuit against McGuire Mortgage Company, FT Mortgage Companies, First Horizon Home Loan Corporation and certain other entities that arise out of common law, state law, or federal law related to the origination of your loan, including but not limited to claims under (a) the Missouri Second Mortgage Loan Act (MSMLA) and any similar state statute; (b) all federal and state consumer protection statutes, including but not limited to Missouri's Merchandising Practices Act, the federal Truth-in-Lending Act and the Real Estate Settlement Procedures Act; (c) all other claims at law or equity; (d) any local rules or procedures, contract, or any state or federal law regarding second mortgage loan fees or interest; and (e) deceptive advertising or unfair or deceptive trade practices claims. The Release will compromise rights that you have against First Horizon, against McGuire Mortgage, against FT Mortgage Companies, against companies that collected payments from you or serviced your loan, and from certain other persons and companies. The full text of the Release, including definitions and identification of parties released, is contained in the Settlement Agreement.

If the Settlement is approved, the terms of the Settlement Agreement, including the Releases, will be final and binding upon, and shall inure to the benefit of: (a) all members of the Settlement Class, except those who request timely and proper exclusion from the Class; (b) each Class Member's respective spouse, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, co-obligors, co-debtors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government or bankruptcy trustees in the capacity as *parens patriae* or on behalf of creditors or estates of the releasees); (c) First Horizon (and any of its parent companies, subsidiaries, officers, directors, and employees); and (d) all beneficiaries of the release stated in the Settlement Agreement.

The Release generally will not affect any disputes that you may have with a company other than McGuire/First Horizon that concern the servicing of your loan(s) and you can raise matters that are the subject of the Release as a defense to foreclosure in certain instances. Consult the Settlement Agreement for a more detailed explanation of these terms.

If you or someone acting on your behalf is currently involved in litigation against McGuire/First Horizon, either individually or as part of a Class in some other court, then you may be barred from pursuing those claims if you do not timely exclude yourself from the Settlement. The existence of such other lawsuit will not preserve your rights and you should consult an attorney about your rights.

This is only a summary of the claims and entities that are to be released under the proposed Settlement. For more information, you may obtain a copy of the Settlement Agreement from the Court or by writing to the Settlement Administrator.

#### **COMMON QUESTIONS**

- ***Does the Settlement Mean I Can Stop Paying My Loan?***

No. If you are still paying on your loan from McGuire/First Horizon, you must continue making payments. The Settlement does not affect the terms of your loan and your Benefit Amount does not decrease the amount owed on your loan.

- ***Are the Settlement Proceeds Taxable?***

Possibly. You will need to consult with a tax advisor to determine whether your Settlement Benefit is subject to taxation and, if so, in what amount, when and to whom, any such taxes must be paid.

- ***What If the Settlement Is Not Approved By the Court?***

If the Court does not finally approve the Settlement, the preliminary Settlement will be null and void and the named plaintiffs (McLeans and Joneses) will proceed with their Lawsuit and claims against McGuire/First Horizon, individually and as representatives of the previously-certified liability class.

#### **FOR MORE INFORMATION**

This Notice is only a summary of the Settlement. To review a complete copy of the Settlement Agreement,

Contact the Settlement Administrator:

*First Horizon Missouri Second Mortgage Loan Litigation  
Settlement Administrator  
P.O. Box 2086  
Birmingham, AL 35201-2086  
(888) 465-9207*

Or Contact Class Counsel:

*Walters, Bender, Strohbehn & Vaughan, PC*  
2500 City Center Square  
1100 Main Street  
P.O. Box 26188  
Kansas City, MO 64196  
(800) 330-2581 (toll free)  
(816) 421-6620 (phone)  
(816) 421-4747 (fax)  
*mcleansettlemnt@wbsvlaw.com (e-mail)*  
*www.wbsvlaw.com*

You can also review the court file for the Lawsuit during regular court hours at:

*Clerk's Office*  
*Circuit Court of Jackson County, Missouri*  
308 W. Kansas  
Independence, MO 64050

In sending any document to the Court, Plaintiffs' Counsel, McGuire/First Horizon's Counsel, or the Settlement Administrator, it is important that both your envelope and any documents inside contain the following case name and identifying numbers: *McLean v. First Horizon Home Loan Corp.*, Case No. 00CV-228530. In addition, you must include your full name, address, and telephone number at which you can be reached.

***Please do not contact the Clerk's Office for anything other than to make arrangements for reviewing the court file. Do not call Judge Scoville's Chambers.***

#### IMPORTANT DATES TO REMEMBER

- **May 31, 2007 - deadline (postmarked) to mail your Claim Form.**
- **May 1, 2007 - deadline (postmarked) to mail Requests for Exclusion from the Settlement.**
- **May 1, 2007 - deadline to file (with the Court) and mail Objections, Notices of Appearance, and/or Requests to Intervene**
- **June 7, 2007 - the date of the Final Fairness Hearing**

BY ORDER OF THE COURT  
Vernon E. Scoville, III, Associate Circuit Court Judge

Dated: February 21, 2007