

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

**ORDER**

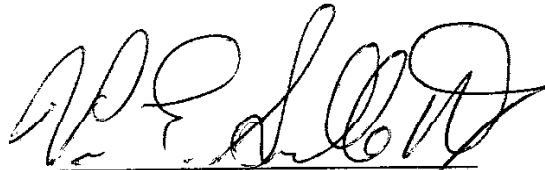
Defendant's Motion for Partial Summary Judgment – Preemption is before the Court; and the Court, having referred all pre-trial matters to Senior Judge William F. Mauer, as Special Master, for handling pursuant to Rule 68, and having further received and reviewed the attached Report from the Special Master dated April 13, 2005, hereby adopts the Report and rules as follows:

IT IS ORDERED that Defendant's Motion for Partial Summary Judgment – Preemption is GRANTED IN PART and DENIED IN PART. The Motion is GRANTED solely as to that portion of any claim by an Unnamed Plaintiff based on the unlawful assessment of a "loan discount fee" that Defendant charged, contracted for and/or received in connection with a second mortgage loan made after December 31, 1998, provided that Defendant first proves that the "loan discount" fees it charged were "substantially similar" to the "loan discount" fees in Phipps v. Guaranty Nat'l Bank, No. 03-0420 (W.D. Mo. Sept. 17, 2003). Defendant's Motion is in all other respects DENIED, with the understanding that any claim by an Unnamed Plaintiff based on the unlawful assessment of other costs and fees charged, contracted for and/or received by Defendant in connection with a second mortgage loan made after December 31, 1998 will be

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evaluated on a case-by-case basis consistent with the National Bank Act and the OCC regulations.

Dated: 13 Oct 05

  
Vernon E. Scoville, III, Circuit Judge  
Assoc

cc: Counsel of Record

**A TRUE COPY - ATTEST**  
CIRCUIT COURT OF JACKSON COUNTY, MO  
DIVISION 28  
DIVISION CLERK  
BY Cheryl Raines DCA