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Judge issues partial ruling in payday lender suit

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A partial ruling has been handed down by 13th Judicial Circuit Judge David Guthrie in the civil suit brought in October against Advance America Servicing, Inc. of Camden.

Guthrie ruled that an arbitration clause in the plaintiff's contracts is unenforceable because the contract lacked mutuality when it reserved Advance America the right to all civil remedies in case of dispute, but did not reserve this right to the plaintiffs.

A ruling on the constitutionality of the fees charged in the payday loans was not made.

During a bench trial held in October, local plaintiffs Kelvin White, Cynthia Wimberly and Nehemia Bailey accused Advance America of applying unlawful interest in violation of the Arkansas Deceptive Trade Practices Act. They claim that fees charged in their loan contracts are actually annual interest rates and are in excess of 17 percent allowed by the trade act.

Plaintiff's lawyers Chris Averitt of Scholtens & Averitt in Jonesboro and Todd Turner of Arnold, Turner & Turner in Arkadelphia claim that Advance America charges excessive interest rates, but characterizes them as "fees."

Advance America's defense attorneys Phillip Stano and Lewis Weiner
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LENDERS

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\$15,000; Recorder Cost fund revenues, \$82,382.25; Boating Safety fund revenues, \$3,400.60; Circuit Clerk Child Support fund revenues, \$3,008.83; District Municipal Court fund revenues, \$6,230.57; library fund revenues, \$204,430.17; County administration of justice fund revenues, \$13,000; indigent defense fund revenues, \$3,969.84; public defender fund revenues, \$5,638.28; drug Fines fund revenues, \$14,187.60; Act 96 fund revenues, \$20,975.79; Act 988 fund revenues, \$2,141.93; treasurer's automation fund revenues, \$12,000; collector's automation fund revenues, \$86,783.68, \$14,211.08; and special jail account fund revenues, \$14,833.64.

An appropriation of \$164,000 was stricken from the budget by the judge due to revisions in sales tax procedures made by the legislative auditor.

of the Sutherland, Asbill & Brennan law firm in Washington, D.C. and Claire Hancock of the Wright, Lindsey & Jennings law firm in Little Rock contended that the case should not have been heard in circuit court at all and should be remanded to arbitration due to a clause in borrower's contracts.

According to Stano, all of the plaintiffs signed customer agreements that contain a waiver of jury trial and a provision for arbitration. This would require that any disputes brought against the payday lender by the customer must be resolved in arbitration only.

Averitt stated that the payday contract for Advance America states that the company can take customers to court if the check they used to secure the loan was insufficient, but states that customers cannot take Advance America to court if they challenge the contract.

Averitt said that the contracts lack mutuality, explaining that the contract must be the same for both the business and the customer.

Guthrie's motion upheld the view of the plaintiffs.

"The decision centered on the interpretation of the contract between these parties, which is a narrow issue," Guthrie said in a phone interview today. "My ruling was that the provision of the contract dealing with dispute resolution is governed by Arkansas law rather than the federal arbitration act. It lacks what the law refers to as 'mutuality.'"

Turner told the Camden News that he was pleased with the partial ruling.

"Our request to have the law say that what they are doing is unconstitutional, as you can see, he (Guthrie) didn't rule on that yet," Turner said. "He's going to give them time to file an answer and then he will rule on that issue. We'll wait until they (the defendants) file their answer and see if the judge rules immediately. If not, I guess we'll be asking for a trial."

Averitt was also pleased with Guthrie's partial ruling.

"We were very pleased with his order," Averitt said. "We felt like he ana-

lyzed the arbitration agreement fairly. Of course, we're excited that, at least in the Camden area, people will have the right to go to court against Advance America and not arbitrate their claim. We're still seeking a ruling on the merits of our claim that interest rates charged are illegal."

Guthrie gave attorneys for Advance America until Jan. 18 to respond to the original complaint, now that the motion to dismiss has been ruled on.

"The defendant has the option to either answer the complaint within the period specified by law," he explained, "or it can file a motion to dismiss, alleging certain grounds. The latter course is what the defendants did in this situation. I have now ruled on that motion, so, therefore, it is appropriate for them to answer the merits of the complaint."

In response to the question as to what his next step would be, defense attorney Weiner said today, "Well, that is a decision that I will be making with my client and we will file appropriate things in court."