



FLORIDA ATTORNEY GENERAL AND FLORIDA REGULATOR SETTLE WITH ONLINE "PAYDAY LENDER"

The Florida Attorney General and the Florida Office of Financial Regulation Commissioner (OFR) entered into settlements with on-line "payday" lending operators Western Sky Financial, LLC, CashCall, Inc. and related parties (collectively "lenders"). Prior to the settlement the Attorney General and OFR filed a joint action against the lenders in court and OFR also filed a separate administrative case against the lenders.

The settlements resolved allegations that the lenders offered, serviced and collected on Western Sky loans to Florida borrowers with illegal interest rates of more than 18%. The settlements provide for the following:

- The lenders are prohibited from enforcing or collecting outstanding loan balances;
- The lenders are banned from future lending in Florida;
- CashCall's lending license is revoked;
- The lenders are required to request that credit bureaus remove any credit reporting entries relating to loans subject to the settlement.

The value of the outstanding loans that the lenders agreed not to enforce is reported to be \$15 million and restitution to consumers is estimated to be \$11 million. In addition the lenders agreed to fines and costs of \$1.25 million.

The lawsuit and administrative action alleged that the lenders violated Florida's usury laws and the Florida Deceptive and Unfair Trade Practices Act as to loans originated by Western Sky Financial and serviced by CashCall. According to the allegations, the loan program relied on a "rent-a-tribe" scheme by using a Native American tribal entity to originate loans with interest rates higher than permitted under Florida law.

The Court will hold a Final Approval Hearing on May 15, 2017 to determine if the proposed settlement is fair, reasonable and adequate.

The Florida settlement comes after several other settlements and enforcement actions against the same entities by regulators in other states and the CFPB challenging the true creditor in the loan

programs.

The settlement highlights the importance of proper program structure in loan programs that rely on preemption to avoid state laws. Please contact us with question regarding the settlements or to discuss loan program structure options. ☐

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