

Consumer Impact

NCLC Takes On Toxic Land Contracts

Wall Street Investors Threatening Poor, Communities of Color

After the housing crash and financial crisis of 2008, NCLC and other advocates pushed the government to improve regulations to protect home buyers.

But Wall Street real estate investors are still profiting from exploiting the poor, as NCLC's recent report, *Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color*, explains. The land installment contract, a shady real estate lending tactic marketed to low-income African-Americans more than 50 years ago, is again popping up, according to NCLC's nationwide survey of consumer and civil legal-aid attorneys.

NCLC found that contract-for-deed homes in Atlanta owned by private equity firm Harbour Portfolio were disproportionately located in African-American neighborhoods. "This predatory financial product sucks away hard earned dollars from people who believe they are investing in the dream of homeownership, only to find it was a mirage," said Sarah Bolling Mancini, of counsel to NCLC and co-author of the

report. "Particularly in credit-starved communities of color, large companies pushing land installment contracts are taking away the home equity that should be built up by the people living in these communities and transferring it to Wall Street-backed investors."

Wall Street Strikes Again

Many homes lost to foreclosure, often in need of substantial repairs, were snapped up for a fraction of their market value by investment firms. Rather than repair the homes and

sell or rent them, sellers are promising buyers with poor or no credit a path to homeownership. Unfortunately, most of them never get there.

Would-be buyers are offered a contract in which they make a small down payment, plus years of monthly payments. But the buyer does not have ownership, and accumulates no equity in the home. If hard times hit and a payment is missed, the contract can be cancelled, and the payments already made are worthless.

Crushed by Repair Costs

Worse, these contracts shift responsibility for repairs to the would-be buyer. The occupants of the house may be forced to make major expenditures to keep the home safe for their family.

Since these are likely low-income consumers, dollars spent on repairs may result in no funds available to make the regular monthly installment payment. The occupants are quickly evicted from the home, with nothing to show for the months of payments and cash outlays for maintenance and repairs. The investor then churns the property to another desperate would-be homeowner.

continued on page 9



Trapped by a land contract: Atlanta Legal Aid clients Veronica Pitts and Al Butts.

NCLC Supports Consumer Lawyers after Spokeo Decision

When the Supreme Court's decision in *Spokeo v. Robins* came down in May of 2016, NCLC Director of Litigation Stuart Rossman knew immediately that hundreds of federal cases would be affected. NCLC was well positioned to create a resource for consumer attorneys so that "we could ensure that the first decisions applying

the new *Spokeo* standards would make good law for consumers in the future," says Rossman.

As attendees experience each year at the Consumer Rights Litigation Conference, one of NCLC's great strengths is helping connect and educate consumer advocates around the country. When the *Spokeo* decision was announced, NCLC Partners Council members and their colleagues were in instant communication to devise a game plan.

continued on page 11

Inside this issue

- 2 A Note from the Executive Director
- 3 Happy 25th Birthday, CRLC!
- 4 Cy Pres Awards
- 5 Advocate Spotlight: Odette Williamson
- 6 A Win for Low-Income Utility Consumers
- 7 Payday Loan Rules Proposed
- 8 Tax Credits Seized from Poor Borrowers
- 9 NCLC Defends TCPA
- 10 Impact Update: Forced Arbitration
- 12 CRLC 2016 in Sunny Anaheim – Join Us!

Consumer Impact

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A Note From the Executive Director

Dear Friends:

It's an exciting time as we prepare for this year's Consumer Rights Litigation Conference in Anaheim, California on October 20-23.

In honor of this special anniversary, on page 3 we look at how the conference has evolved over the years. There is no other forum like the CRLC for consumer attorneys. I hope you'll enjoy our trip down memory lane – and we hope to see you in Anaheim!

On the cover, make sure to read about the extraordinary work done by our advocates and supporters following the Supreme Court's decision in *Spokeo v. Robbins*. I'm proud of how our community has pulled together on this team effort.

On other pages, learn more about how NCLC supporters are making our advocacy possible through annual gifts, sponsorships, cy pres support and planned giving.

I'm pleased to announce that Steve Hurley, former Director of Strategic Development for the ACLU of Massachusetts, came on board as NCLC's Chief Development Officer last June. Steve led the search for a new Director of Leadership Giving and Engagement following Jerry Tuckman's recent retirement. I know that many of you enjoyed working with Jerry, and he will be missed.

I am confident that Steve will take our fundraising operation, which makes NCLC's work on behalf of low-income consumers possible, to new levels. Please join me in welcoming him to NCLC. You can reach Steve at shurley@nclc.org or at 617-542-8010.

It is a privilege to spend my work life surrounded by passionate advocates for justice and equality. Thank you for being a part of that community.

Sincerely,

Rich Dubois



NCLC Chief Development Officer Steve Hurley (left) and Executive Director Rich Dubois.

The CRLC – Bringing Consumer Rights Advocates Together for 25 Years

This October, Anaheim, CA, will host the 25th annual Consumer Rights Litigation Conference (CRLC), drawing together a vibrant network of consumer advocates. With over 700 attendees in recent years, the CRLC has come a long way since 1992, when NCLC gathered about 85 people at a small hotel in Brookline, MA. “It smelled like chlorine the whole time,” remembers retired NCLC Deputy Director Bob Hobbs. “Our meeting room was right next to a pool!”

The first NCLC conference

The CRLC (called “NCLC Trial Lawyers’ Financial Services Litigation Conference” in the first year) was the brainchild of Hobbs, with a goal of helping attorneys struggling to build a consumer law practice learn from their successful colleagues. When the response was positive, NCLC did it again the next year, but in Chicago. Since then, the CRLC has rotated around the country so that consumer advocates in different regions can attend without the expense of travel.

And speaking of costs, the financial goal of the CRLC has always been to break even. “Will Ogburn said I could do the conference as long as I didn’t lose any money,” recalls Hobbs with a chuckle. An expensive event to put on (it takes staff time, travel, catering, and conference space), the CRLC is made possible with the help of individual donors, corporate sponsors, and registration fees, which are kept as low as possible.

Former NCLC Executive Director Will Ogburn has a theory about why the CRLC is so popular. “Consumer attorneys often work in isolation,” he points out. “The CRLC allows people to meet others who are walking the same path, and shows those just starting out in consumer law that it can be done.”

Times Have Changed!

The conference looked and operated very differently in the early years. Invitations were mailed, as there was no email. Up until a few years ago,

handouts and agendas were shipped to the conference site in 50 or more packing boxes. But times change – the registration process has been exclusively online for several years now, and in 2016, NCLC is “going green” by making all course materials accessible via an app for smartphones and tablets!

Some things haven’t changed. Breakout sessions conducted by expert practitioners provide substantive training, strategies, and practical advice for running a consumer law practice. Still, “it’s in the networking,” says Ogburn, “that the magic happens.”

What makes the CRLC special?

Conference attendees not only gain wisdom and insight from each other, but also collaborate on cases. Legal services as well as private attorneys attend the CRLC, many through the help of scholarships, and rave about the strategies they learn to better represent their low-income clients.

“I’m astonished by the conference’s growth and the number of scholarly members who are now involved,” says Pittsburgh attorney Mike Malakoff, who spoke at the first conference in 1992. “It’s uplifting to know that all of the members are still concerned about fighting in the war on poverty.”

Some of the CRLC’s notable guest speakers over the years have included Ralph Nader and CFPB Director Richard Cordray. Senator Elizabeth Warren has spoken at several CRLCs, and last year recorded a memorable



video tribute to Will Ogburn in honor of his retirement.

“I hope that the conference becomes an annual event, and I think it should be,” wrote attorney Bernard Brown to Bob Hobbs in 1992, after attending the first. We are grateful that our donors have helped NCLC provide this invaluable professional development experience for consumer attorneys all over the United States.

Consumer Rights Litigation Conference

October 20-23, 2016
Anaheim, California

*Celebrating 25 years of the
most valuable consumer law
conference of the year!*



VISIT ANAHEIM

Cy Pres Awards Support NCLC's Advocacy

Attorneys **Andrew T. Thomasson** and **Abraham Kleinman** recently directed four cy pres awards to NCLC, explaining that our organization was chosen as a cy pres recipient due to our "well-established history of assisting disadvantaged consumers and the attorneys who represent them." Read about two of these cases below:

In **Graff v. United Collection Bureau**, a class action lawsuit was filed against United Collection Bureau, Inc. for violations of the Fair Debt Collection Practices Act (FDCPA). Plaintiffs alleged that United Collection Bureau left thousands of live telephone messages for New York consumers in which it failed to disclose its company name, the nature of the call, or that the call was from a debt collector.

In **Avila v. Law Office of Gary M. Feldman**, A class action lawsuit was brought against the Law Office of Gary M. Feldman for violations of the FDCPA. A settlement resulted in each class member receiving a payment of \$238.09 with unclaimed settlement funds donated as a cy pres award to NCLC.

Peel v. BrooksAmerica. Attorneys: **Jeffrey K. Berns** and **Lee A. Weiss**. In this class action case, plaintiffs alleged material omissions in loan documents for Optional Adjustable Rate Mortgage Loans purchased after closing by Washington Mutual Mortgage Securities Corp. and/or WaMu Asset Acceptance Corp. Plaintiffs asserted that Brooksamerica Mortgage Corp and others failed to disclose, at the outset of the loans, that making the low payment amounts identified in the "Notes and Truth in Lending Disclosure Statements" ensured an increase in the loan's principal balance (negative amortization), and that these material nondisclosures violated California state law and constituted fraud. A \$10 million settlement fund was established after the parties reached agreement. NCLC was chosen as a recipient of unclaimed settlement funds because of our advocacy against predatory mortgage loans and wrongful home foreclosures.

In Re Nutella Marketing and Sales Practices Litigation. Attorneys: **Joseph Guglielmo** and **Erin Green Comite**. This class action was brought on behalf of a nationwide class of consumers against Ferrero U.S.A., Inc., challenging deceptive marketing representations involving Nutella brand hazelnut spread products. After a \$2.5 million class action settlement was reached, unclaimed settlement funds were directed to cy pres recipients. NCLC was selected because of our advocacy and protection of consumer rights.

Thank you for your work in support of your clients, NCLC, and our mission.



Andrew T. Thomasson



Abraham Kleinman



Lee A. Weiss



Jeffrey K. Berns

Cy Pres Donors March – July 2016

Thank you to the following individuals and firms who have directed recent cy pres and other court awards to NCLC. The awards support greater impact through our shared work.

Nancy Barron
Alexander Burke
Erin Green Comite
Kelly M. Dermody
Joseph Guglielmo
Adam Gutride
Bryan Kemnitzer
Ahmad Keshavarz
Abraham Kleinman
Jonathan R. Miller
Michael Pereira
David J. Philipps
Phillip C. Rogers
Seth Safier
Kristen Semplicio
Andrew Thomasson

Many of the cy pres awarded to NCLC come from multiple plaintiffs' counsel. We have endeavored to name all.

Cy pres awards make NCLC's advocacy possible!

If you would like to direct a cy pres award to NCLC, please contact Steve Hurley at shurley@nclc.org or call 617 542-8010.

ADVOCATE SPOTLIGHT **Odette Williamson**

NCLC's Williamson Leads Racial Justice Project

As conversations about racial justice in the United States have intensified, NCLC has focused on the financial impact of racial discrimination. Exploitative financial practices – including “redlining” by banks and insurance companies, and the targeting of low-income, predominantly minority communities by predatory lenders – have resulted in a marketplace that is certainly not fair to all.

Through NCLC's *Racial Justice and Equal Economic Opportunity Project*, we seek to highlight the impact of neglect and harmful policies on communities of color and fight for reforms that will benefit these consumers. Project director **Odette Williamson**, an attorney at NCLC since 1999, leads these efforts. “It’s important that we view all of our advocacy issues through a lens of racialization,” explains Williamson. “We know that abusive, predatory financial practices have stripped wealth and resources from communities of color.”

The *Racial Justice and Equal Economic Opportunity Project* works on issues that include:

- Credit and Economic Opportunity
- Equal Access to Higher Education
- Sustainable Homeownership
- Equitable Access to Broadband, Media, and Telecom Services

NCLC attorneys have also participated in groundbreaking anti-discrimination litigation, such as *Adkins v. Morgan Stanley*, a case brought to hold Morgan Stanley accountable for its collaboration with a subprime lender that made a steady stream of irresponsible, high-risk loans to African-American homeowners in the Detroit area.

Education and Support Nationwide

Our advocacy also includes education and support for advocates through

webinars and in-person trainings. According to Williamson, some of NCLC’s popular webinars include “Minding the Gap: Using the New Racial Wealth Audit to Measure the Impact of State and National Policies on the Racial Wealth Gap,” and “Webining and Other Racial Justice Concerns in the Era of Big Data.”

Williamson chosen as Shriver National Center on Poverty Law Fellow

The Shriver National Center on Poverty Law chose Williamson as one of 41 fellows invited to attend their 2015 Racial Justice Training Institute in Chicago. “The Shriver fellowship provided NCLC with the opportunity to be part of the national conversation on racial justice,” says Williamson. “This experience had a real impact on NCLC’s advocacy; through our participation we have broadened our coalition to include advocates who do direct field work with the low-income consumers that we serve.”

The nine-month program brings together advocates from across the United States to receive intensive weekly training, strategize together to find ways of combating racially discriminatory practices, and support each other’s work going forward. The value of this network was evident in the research for NCLC’s recent report on abusive land installment contracts (see cover story). Our partners at other organizations gave us data about their own communities, helping NCLC to identify a new wave of predatory real estate lending that especially harms communities of color and immigrants.

Racial and Economic Justice Intertwined

For generations, the fight against poverty and the struggle for civil rights have been closely linked. Both President Lyndon Johnson, whose “War on Poverty” created the first federal



“We know that abusive, predatory financial practices have stripped wealth and resources from communities of color.”

– NCLC attorney
Odette Williamson

funding for legal services support centers (one of which was NCLC) and Dr. Martin Luther King fought for economic as well as racial justice. With the expertise of our advocates and your support, NCLC will continue to do the same.

Access NCLC’s free (see three examples in the box below) related resources, including webinars: nclc.org/special-projects/racial-justice.html

Racial Justice Resources for Advocates

Policy Brief: *Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination*
nclc.org/images/pdf/credit_discrimination/Past_Perfect_050616.pdf

Webinar: *The Color of Debt: Racial Disparity in Debt Collection Lawsuits*
nclc.org/racial-justice.html

Racial Disparities in Auto Loan Markups, State by State Data
nclc.org/images/pdf/car_sales/ib-auto-dealers-racial_disparities.pdf

NCLC in the News

(Highlights, March – July, 2016)

Educating the public and decision-makers about issues affecting low-income consumers is a critical part of NCLC's work. Our advocates are frequently quoted in stories by major media outlets (print, online, broadcast, and radio) and often provide background research to reporters and producers. Here are some examples:

 **Chi Chi Wu** in the *Washington Times Herald*: “Tax returns are the most important document a family fills out every year, and you’d think there would be some minimum standards or training for people they pay to prepare their taxes... But anyone can set up a card table on a sidewalk and prepare taxes for a living.”

 **Alys Cohen** in the *Boston Globe* regarding survivors struggling to remain in their homes after the borrower's death: “Every month of delay increases the interest that a homeowner owes, increases the fees on the loan amount, and decreases the chances of a loan modification.”

 **Margot Saunders** on *NBCnews.com*: “There’s no constitutional right to make robocalls. The problem is not

that there are too many lawsuits; the problem is that there are too many robocalls.”

 **Chi Chi Wu** assisted producers and **Persis Yu** provided research for HBO's *Last Week Tonight with John Oliver*, resulting in a well-received segment on credit reporting abuses. Visit: goo.gl/o8pNnB

 **Lauren Saunders** in the *Huffington Post* on class action law suits against big banks and unscrupulous companies: “You know you were screwed, but you

don't know how they did it. Thanks to discovery, you can find evidence – the smoking gun – and use that to convince regulators to take action.”

 **Carolyn Carter** in *ProPublica and NPR*: “The WAGE Act is a long overdue first step to correct the inadequate protections for working families.”

 **Chi Chi Wu** in the *New York Times*: “We think deferred-interest credit cards are probably one of the worst abuses, if not the worst abuse, that remains after the Credit CARD Act.”

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Impact Update

NCLC Wins Help for Low-Income Consumers in Two Major Utility Mergers

NCLC's energy and utilities advocates are always busy, and the past several months were no exception. In two major utility company mergers, NCLC fought for the interests of low-income consumers – and won.

In March of 2016, the Washington D.C. Public Service Commission gave final approval to the merger of Exelon Corporation and PHI Holdings (operating companies of Pepco, Delmarva, and Atlantic City Electric). NCLC was actively involved in this issue in multiple states for two years, presenting testimony and advocating that the merger not be approved unless it included substantial investments in energy efficiency in affordable housing, along with other benefits for low-income households.

Reflecting NCLC's advocacy, the final settlement included \$6.75 million for low-income energy efficiency investments, as well as substantial funding for other benefits targeted to low-income households. In the PSC's final order, it actually increased the amount targeted for energy efficiency in multifamily housing to \$11.25 million.

And in other merger news, Southern Company, an electric utility company with customers in Georgia, Alabama, Mississippi and Florida, announced plans in 2015 to merge with AGL Resources, a large natural gas company operating in various states across the country. This merger would create the second largest power company in the United States.

In proceedings before the Georgia Public Utilities Commission, NCLC represented Georgia Watch and the National Housing Trust, which intervened to advance the interests of low-income Georgia customers and advocate for a greater financial commitment to energy efficiency programs for low-income families and in multifamily housing.

The Georgia Public Utilities Commission approved the merger, along with a settlement agreement which expands access to energy efficiency services for low income consumers. Georgia Power Company will spend an additional \$2.5 million on a pilot program to improve energy efficiency services for low-income customers in Georgia, with the possibility of additional funds in 2019.

Attorney Deb Lumpkins Shares a Simple Way to Give Back to NCLC

This Washington D.C. attorney (who has practiced consumer law in Oklahoma and Missouri) recently became a member of NCLC's Legacy Society.



Q: Why is it important to you to include NCLC in your estate plan?

A: There was a time when I literally slept with the NCLC manuals, while I was developing my consumer practice. I wouldn't have the career I have without those manuals, and the support NCLC gave me. I had dabbled a little in consumer protection at legal aid, and went out on my own so I could devote my practice to consumer protection. I was all by myself – the only attorney within nearly 200 miles handling consumer cases – so those manuals and the attorney listservs NCLC and NACA set up, were the reason I succeeded.

Q: What advice would you give to others about planned giving?

A: We all have to go sometime, and need to think about what has meant

something in our lives. We have legal obligations to some people, such as spouses and minor children, but we have moral obligations to others. I can't help consumers once I'm gone, but I can help others to continue the good fight.

Q: How did you structure your planned giving?

A: I no longer own real property and my children are both grown, so I no longer have need of a valid will. Rather than go to the effort of creating one, I named NCLC as the "payable on death" recipient on a CD. I'm also considering naming NCLC as a percent beneficiary on a 401(k) type account. I don't have life insurance now that I no longer have any support obligations to my family, but that could also be used to set up a percent beneficiary. Easy works for me!

Q: How does it make you feel to support NCLC through a legacy gift?

A: I'm so happy to return even a small portion of what NCLC has given to me. The satisfaction of a good career, doing good work, is and has been, so rewarding. I doubt I could have done it without NCLC's help. I'm so pleased to have such an easy way to share.

To learn more about planned gifts to NCLC, please contact Steve Hurley shurley@nclc.org, (617) 542-8010.

"I can't help consumers once I'm gone, but I can help others to continue the good fight."

— Deb Lumpkins

Payday Lending

NCLC's opposition to predatory payday lending has yielded important results over the years. A number of banks exited the payday loan business after stricter regulations were imposed, and criminal and civil enforcement actions have targeted illegal online payday loans.

In June 2016, the CFPB issued its long awaited proposal for new rules to protect payday loan borrowers. "The CFPB has proposed the common-sense rule that lenders should only make loans that borrowers have the ability to repay without re-borrowing," said NCLC Associate Director Lauren Saunders.

This "ability to repay" requirement is a critical component of reform and will help ensure that loans are more affordable at the outset and protect consumers in states without payday lending from industry efforts to roll back important interest rate caps. It also has the advantage of creating a level playing field for payday lenders, online lenders, and banks.

Saunders points out, however, that the proposed rules leave some troubling loopholes. NCLC joined with other advocacy groups in a statement responding (see bit.ly/2aed9o4) to the CFPB's proposal, and continues to work with other advocates to strengthen the CFPB proposal, and fight efforts by the payday industry to raise state interest rate caps or weaken consumer protections.

One area of ongoing vigilance: we are concerned that the industry is moving aggressively from short-term loans into longer installment loans, as detailed in *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default*, released in July (see bit.ly/2a819T5).

High-cost loans strip wealth from low-income families and lead to a debt trap. With your support, NCLC will continue to oppose predatory lenders who target vulnerable consumers.

NCLC Joins AARP in Class Action Lawsuit Against Nationstar Mortgage

“Unnecessary and Unreasonable Property Inspections and Fees” Alleged

In the spring of 2016, National Consumer Law Center joined with Legal Counsel for the Elderly (LCE), an affiliate of AARP, in a class-action lawsuit charging that Nationstar Mortgage LLP conspired to order and charge unnecessary and unreasonable property inspections and fees.

Plaintiff Retha Floyd, a 95-year-old Washington D.C. homeowner who has a reverse mortgage loan with Champion, a subsidiary of Nationstar Mortgage, fell behind on her property taxes and insurance payments. Although her total outstanding debt was less than \$2000, Champion sued to foreclose on her home of 50 years. Fortunately, a repayment plan was negotiated and Ms. Floyd was able to keep her home.

However, she began to be billed for ‘drive by’ property inspections of two to three times per month, and was charged a \$15 to \$20 fee each time. HUD guidelines state that such inspections should be scheduled no more than every 30 days.

The fee for even one appraisal per month can represent a hardship for low-income homeowners like Retha Floyd. Yet an investigation revealed that Champion sometimes orders and assesses fees for property inspections more than once in a day, or several times in one week, for no legitimate reason.

Champion and other reverse mortgage lenders “use an automated system that orders unreasonable and unnecessary property inspections on thousands of homes that have reverse mortgages. In doing so, the companies line their own pockets at the expense of defenseless elders,” said NCLC attorney Charles Delbaum.

Thanks to the support of our donors, NCLC is able to participate in cases like this one, fighting a shameful practice that exploits low-income consumers. On behalf of Ms. Floyd and thousands of other borrowers who have been victimized by Champion’s practices, the lawsuit seeks monetary damages, restitution, and declaratory and injunctive relief.

The U.S. government has extraordinary collection authority – in most cases, even bankruptcy doesn’t cancel out a student loan balance. The federal government can and does regularly seize income tax refunds because of student loan debt.

“This year my taxes were taken by the Department of Education,” wrote a commenter on NCLC’s Student Loan Borrower Assistance Project blog. “Currently I am sleeping on my mother’s couch with my 1 yr. old, and my 7 yr. old sleeps on the other couch... I lost my job... before my taxes were taken I was and still am on a repayment plan to get out of default with my student loans.”

Another commented: “My entire federal and states taxes were taken and also I’m being garnished every paycheck... was going to stock up on food and also I owe a couple family members money from helping me pay some bills during the year... we have Christmas after taxes and so my children did not get any Christmas gifts or a Christmas this year.”

“We have Christmas after taxes and so my children did not get any Christmas gifts or a Christmas this year.”

— a student loan borrower whose EITC was seized

Government Seizes Tax Credits from Poorest Student Loan Borrowers

Each spring, tax refund time can’t come soon enough for many struggling families. In low-income households, tax refunds are often the only significant lump sum of cash received all year. Many families use refunds to catch up on basic expenses such as utility bills – or to pay down debts incurred during the leaner months.

The Earned Income Tax Credit (EITC), supported by both Democrats and Republicans, boosts the refund of many low and moderate income families. But as the U.S. faces a student loan debt crisis – outstanding loans total more than \$1 trillion, and 7.5 million borrowers are in default – the government is seizing EITC dollars from poor families, punishing the children of those who can’t afford to pay their student loans.

Soaring Education Costs

As higher education costs soar, low- and middle income students are faced with a terrible choice – trying to make it without a college degree, or starting out adult life with crushing debt. And even students with degrees from excellent colleges can find it difficult to find work paying well enough to cover their debts and living expenses.

Perhaps the saddest stories are of those who didn’t finish college, but still have debts to pay. Some of these students were ripped off by predatory, for-profit schools and awarded worthless degrees. Others were forced by family responsibilities or financial strain to give up on their dreams of completing college.

No escape from student loan debt

But there is no escape from student loan debt, even for the poorest of the poor.

Hurting children of borrowers

Student loan borrowers reported that their seized tax refunds would have paid for basics such as rent, utilities, child care, and dental care for their children. “The seizure of low-income borrowers’ EITC payments has the inequitable and counterproductive effect of punishing the children of borrowers,” argues Persis Yu, director of NCLC’s Student Loan Borrower Assistance Project. This creates a vicious cycle where the next generation loses opportunities, making it less likely that they will move out of poverty.

The EITC was designed to help lift working families out of poverty. NCLC opposes the harmful and counterproductive seizure of borrowers’ EITC payments, and NCLC is pressing the White House, U.S. Department of Treasury, and the U.S. Department of Education to work together and change this policy.

Read NCLC’s policy brief: bit.ly/1R61mjg

NCLC's Work Results in Strong Rules for Robocalls

NCLC and other advocates applauded a recent FCC rule that increases protections for consumers from unwanted calls. At issue was a bill passed by Congress in late 2015 that allowed for collectors of federal debt – primarily those who target borrowers delinquent on federal student loans – to robocall or text a cell phone without the consumer's consent.

"The FCC's final rule limiting the number of robocalls and texts to three a month by collectors of federal student loans and other federal debt is a very important victory for consumers," said National Consumer Law Center attorney **Margot Saunders**, who testified last spring at a U.S. Senate Commerce Committee hearing.

Representing NCLC's low-income clients and other consumer organizations, including Americans for Financial Reform and Consumers Union, Saunders argued for strengthening the TCPA to better safeguard consumers from invasive robocalls and texts

to consumer landlines and cell phones. "Although the TCPA offers some protections," she told the committee, "the evidence shows that stronger enforcement of this federal law is essential to protect consumer privacy and public safety, and to prevent financial fraud and other abuses."



NCLC's Margot Saunders testifies on Capitol Hill

NCLC is always concerned about abusive debt collection and telemarketing calls that consume time and cell phone minutes, taking a disproportionate toll on low-income consumers. Many rely on cell phones as their primary means of communication and cannot afford to purchase unlimited minutes.

The TCPA, an essential privacy protection law, was passed by Congress in 1991. It was upheld and strengthened in 2015 by the FCC, after NCLC and other advocates argued that automated calling devices should fall within the scope of the TCPA's prohibition against robodialing cell phones without consent.



L to R: Interns Jessica Park, Lee Staley, Eric Hunter, Jennifer Nelson, Elizabeth Doyon

Meet NCLC's Summer 2016 Interns!

GREENFIELD INTERN Eric Hunter was the 2016 Greenfield Intern under a generous grant provided by Professor Michael Greenfield of St. Louis. Eric is in his third year at Washington University School of Law, and while at NCLC he worked with April Kuehnoff, Yael Shavit, and Stuart Rossman. He researched several issues, including fair debt collection, for NCLC reports and manuals. Eric has been interested in consumer law since his first year of law school when he read an article about payday lending. He enjoyed seeing the scope of law as it relates to consumers while learning from NCLC advocates.

HOBBS FELLOW Jennifer Nelson is a third year student at the University of Michigan School of Law. She was the 2016 recipient of the Robert

J. Hobbs Fellowship, established by NCLC's Board of Directors in honor of Bob Hobbs' many years of invaluable service. While at NCLC, Jennifer worked primarily with Charles Delbaum and Stuart Rossman. She wrote amicus briefs, and conducted research both for NCLC's legal treatises and for class action lawsuits. Jennifer, who is passionate about protecting the rights of low-income and vulnerable people, appreciated the opportunity to learn from NCLC's expert litigators.

Elizabeth Doyon is in her second year at Washington University School of Law.

Jessica Park is in her second year at Boston University School of Law.

Lee Staley is in his second year at Boston University School of Law.

Toxic Land Contracts...

continued from page 1

If the owners/investors had rented the property instead, tenant protection laws would have compelled them to make the home habitable. To sell the house, they would be forced to submit to an independent inspection. Instead, investors have exploited low-income consumers, predominantly in communities of color, by selling installment contracts.

Exploiting Dreams of Homeownership

It's easy money to target customers who can't qualify for a traditional mortgage due to low income or poor credit history, and make them false promises of the chance to someday own a home. Signs that invite consumers to "Become a Homeowner!" are routinely placed in front of distressed properties.

The *New York Times* wrote about NCLC's report and noted that several

U.S. Senators have expressed concern to the Consumer Financial Protection Bureau (CFPB). Because this is a national problem, and state laws vary widely, the report recommends that the CFPB issue a comprehensive set of rules to govern the entire transaction, from inception to early termination.

Read the report: bit.ly/29sPcEv

NCLC Designs Guide for Consumer Attorneys to Fight Discriminatory Criminal Justice Debt

NCLC advocates are taking on the problem of criminal justice debt, and its disproportionate impact on low-income communities of color. In partnership with the Harvard Law School Criminal Justice Policy Program, NCLC advocates created the Confronting Criminal Justice Debt: A Comprehensive Project for Reform. As part of this project, NCLC created a litigation guide to help civil legal aid and other attorneys more effectively represent low-income clients.

Criminal justice fees and fines are the monetary penalties charged to criminal defendants – and even for non-criminal offenses such as parking violations – primarily to generate revenue for state and local governments. Public awareness of the issue has increased, particularly after the 2014 protests in Ferguson, Missouri. The U.S. Department of Justice (DOJ) found that racial tensions between police and communities of color were exacerbated by the imposition of unfair and discriminatory fees and fines.

And after the shooting of Philando Castile during a traffic stop in Minnesota last July, the *Star-Tribune* reported that Mr. Castile had been pulled over by police 49 times in 13 years. A school cafeteria worker who earned less than

\$30,000 per year, he had amassed more than \$7,000 in fines and fees, frequently getting his license revoked when he was unable to pay the fines—and then facing more traffic stops and fines for driving on a suspended license.

The litigation guide will help attorneys identify various consumer protections, including bankruptcy, garnishment exemptions, and the Fair Debt Collection Practices Act, as well as constitutional and other protections specific to criminal justice debt that can be used when representing clients. The Harvard Law School Criminal Justice Policy Program wrote a report recommending policy reforms.

Although we think of debtors' prisons as a horror of the past, indigent people are often jailed if unable to pay a court fine.

The DOJ's study of Ferguson found that African-American residents were disproportionately targeted by police for minor offenses. Town officials explicitly told police to bring in more revenues by writing tickets; the DOJ's report included an email from the police chief informing the city manager

that fines in the last month “beat our next biggest month in the last four years by over \$17,000.” The city manager responded: “Wonderful!”

Although we think of debtors' prisons as a horror of the past, indigent people are often jailed if unable to pay a court fine. The DOJ report highlighted the case of a low-income woman whose only offense was a single parking violation in 2007. After she missed payments on the parking fine and a related court appearance she was arrested twice, spent six days in jail, and paid \$550 to a city court – for a parking violation.

Those arrested are often assessed multiple “user fees,” including fees for public defenders and for important components of criminal defense such as evidence tests. Some courts don't refund fees even if the defendant is acquitted or the case dismissed. And the problem is not confined to Ferguson or St. Paul – court debt is an issue throughout the country.

Exorbitant and unjust criminal justice debt can destroy the lives of people who live without a financial safety net. The system takes parents away from children through wrongful imprisonment.

NCLC will sponsor a series of related free webinars. Sign up to be notified of upcoming webinars at: nclc.org/webinars. Access all three reports and other materials at: bit.ly/2bBW8C2.

Impact Update

Fighting Forced Arbitration

NCLC has fought against forced arbitration clauses for years, and public awareness of the issue is on the rise thanks in part to the travails of celebrities like Fox News anchor Gretchen Carlson, who was recently stymied in legal proceedings by the presence of a forced arbitration clause in her employment contract.

But wealthy celebrities are not the usual victims of mandatory, unfair arbitration – it's the average employee or customer who gets hurt. After extensive study, the CFPB released a proposal in May that will help consumers: the CFPB wants to forbid forced arbitration clauses unless the contract permits class actions in court.

The proposed new rules would protect consumers in transactions with banks, credit card companies, debt settlement companies, and auto lease companies. However, the proposal doesn't cover several key industries, such as auto dealers,

for-profit colleges and nursing homes. NCLC welcomes the CFPB's proposal, but continues to advocate for broader consumer protection from arbitration clauses.

In June 2016, attorney David Seligman testified on behalf of NCLC and our low-income clients before the Chicago City Council's Committee on Finance. At issue was an ordinance that would prevent companies doing business with the City from using or enforcing forced arbitration clauses in their agreements with consumers and employees. The ordinance was modeled after NCLC's Model State Consumer and Employee Justice Enforcement Act.

“There is something that you can do about this problem,” Seligman told the Committee. “Under federal law, you're not allowed to regulate arbitration agreements. But you can ... stop doing business with companies that use or enforce forced arbitration agreements in contracts with consumers or employees.”

Fighting mandatory arbitration clauses will continue to be a high priority of NCLC's advocacy.

CFPB Proposes New Debt Collection Rules

The Consumer Financial Protection Bureau (CFPB) recently outlined proposed rules to eliminate abusive practices in the third-party debt collection industry. The CFPB is the first federal agency with authority to issue regulations under the Fair Debt Collection Practices Act since Congress passed the law nearly 40 years ago.

The proposal contains protections designed to:

- ensure that debt collectors collect the right amount from the right person;
- protect consumers from phone harassment by collectors;

- provide clearer information to consumers about their rights and alleged debts; and
- make it easier for consumers to dispute a debt.

The CFPB's proposed limit on the number of phone calls debt collectors can make each week is encouraging, since many struggling consumers are inundated with calls. But it is imperative that debt collectors also be required to ensure accuracy of amounts owed before collecting from consumers.

On the subject of "zombie debt" (old, written-off debt that has been

repurchased by new collection companies), the CFPB makes some improvements. However, their proposal does not prevent collectors from misleading consumers into paying debts that are not legally enforceable. "Killing off zombie debt once and for all by banning all collection of time-barred debt remains the most effective way to protect consumers," said National Consumer Law Center attorney April Kuehnhoff.

The CFPB's proposals represent an important first step that should be strengthened by closing loopholes and adopting additional provisions. With your support, NCLC will continue to advocate for the needed changes.

Spokeo Decision

continued from page 1

Network Bands Together

Partners Council members and other advocates approached NCLC leadership and proposed a special fundraising effort to:

1. Create a section on the NCLC website about *Spokeo* to post favorable decisions, analyses, briefs filed, and other useful resources.
2. Hire the law firm of Gupta Wessler to write a confidential, in-depth analysis of the case and its ramifications that would be made available to all members of the National Association of Consumer Advocates (NACA) and other vetted parties.
3. Make immediate updates to the six NCLC legal manuals affected by the decision so that the books would remain a critical resource for consumer attorneys as they proceed with their cases.

NCLC advocates, leadership, and supporters never hesitated. \$90,000 was raised in four days, and the *Spokeo* page of the NCLC website was live in two weeks at nclc.org/Spokeo. Within a month there were more than 100 posts on the site, with more being added daily.

What Spokeo was About

In arguments before the Supreme Court, Mr. Robins argued that he was harmed

when Spokeo, which bills itself as a "people search engine that organizes white pages listings, public records, and social network information into simple profiles," published erroneous information about his age, income, and marital status. He argued that he had standing to sue Spokeo under the Fair Credit Reporting Act. Attorneys for Spokeo countered that Robins did not have standing since he could not prove that he had suffered a tangible harm because of the alleged error.

The Supreme Court's decision allowed the lower court to consider whether Robins' allegations of violations showed a material risk of "concrete" injury. It further held that intangible injuries can be concrete if certain requirements are met.

Thus the Supreme Court's decision created new challenges for consumer advocates seeking to recover statutory damages (a vital tool used to get restitution for consumers who have been wronged), particularly in cases where it is difficult to prove actual injuries for each class member.

At least 350 District Court and Court of Appeals cases were stayed by the courts pending a decision in *Spokeo*. Once the Supreme Court issued its opinion, the stays were lifted and the trial court actions and appeals are proceeding to interpret and apply the *Spokeo* ruling.



The comprehensive resources created and maintained on NCLC's website will provide invaluable support to the attorneys in these cases, hopefully enabling them to preserve and enforce consumer protection statutory rights.

Meet the Challenge!

We need additional support to continue updating and adding resources to the Spokeo project. NCLC Partners Council member Leonard Bennett is offering a "challenge" to NCLC supporters: he will match every special Spokeo gift (above and beyond regular annual giving), dollar for dollar... and if your gift is a first time contribution to NCLC Len will double it, 2-for-1, up to a total of \$50,000. We are grateful for the support of all Spokeo project donors, and hope Len's challenge will inspire you to join them!

For more information, contact Steve Hurley at shurley@nclc.org.

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The nonprofit National Consumer Law Center[®] (NCLC[®]) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.

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"Thanks for making it possible for legal aid attorneys to learn and fight for justice. Because of your sponsorship, I returned from the NCLC Conference energized and armed with knowledge that has helped me and Bay Area Legal Aid make rights a reality for low-income consumers."

— Juliana Fredman, Staff Attorney
Bay Area Legal Aid, San Francisco