

# Mortgage Servicing Litigation

Below is a sampling of NCLC class action litigation efforts in the areas of mortgage servicing and loan modifications. Information on other NCLC litigation can be found [here](#).

## **HAMP Trial Period Plan (TPP) Contract Claims**

NCLC, with its co-counsel, has filed five class action suits on behalf of Massachusetts residents to challenge the way the nation's major banks and mortgage servicers are implementing the Home Affordable Modification Program. The lawsuits cite the failure of Wells Fargo Bank, Bank of America, Litton Loan Servicing, Citimortgage, and J.P. Morgan Chase Bank to honor their written agreements with homeowners seeking a loan modification. All five cases have survived motions to dismiss brought by the defendants. Several cases have become or will shortly become part of multi-district litigation with similar cases brought in other states. As a result of the lawsuits, NCLC and our co-counsel have been able to get permanent modifications for some of the named plaintiffs and others have been protected from foreclosure pending the outcome of the cases

- Belyea v. Litton Loan Servicing: Amended Complaint; Order Denying Motion to Dismiss
- Bosque v. Wells Fargo: Amended Complaint; Order Denying Motion to Dismiss
- Calfee v. Citimortgage: Amended Complaint; MDL Order
- Durmic v. J.P. Morgan Chase: Complaint; Order Denying Motion to Dismiss; MDL Order
- Johnson v. Bank of America Home Loans Servicing: Amended Complaint; Order Denying Motion to Dismiss; MDL Order; Consolidated (MDL) Complaint

## **Foreclosure Fees and Costs**

### **Wilborn v. Bank One**

This lawsuit challenged provisions in mortgages that allow reinstatement of a loan after default only if the homeowner brings all payments current and also pays the attorney's fees incurred by the lender attempting to foreclose. NCLC and our co-counsel argued that these provisions were contrary to Ohio's public policy that creditors cannot collect attorney's fees from borrowers in debt collection actions. The Ohio Supreme Court found that because the right to reinstate was contractual, not statutory, the requirement to pay attorney's fees was an enforceable part of the bargain. However, the Court distinguished reinstatement from other circumstances such as redemption or paying off a home equity line of credit, where the borrower pays the entire debt and no contractual relationship remains - in those circumstances, the lender cannot collect its attorney's fees. The Ohio Supreme Court remanded that portion of the case which remains pending in the Ohio Court of Common Pleas.

- Class Action Complaint

## **"Robosigning" - Fraud in the Foreclosure Process**

### **Archibald v. GMAC Mortgage**

This lawsuit challenges the practice of GMAC Mortgage submitting certifications and affidavits in support of foreclosures in Maine that falsely state they are based on the "personal knowledge" of the signer and that they are signed in front of a notary. GMAC has been reprimanded by courts in other states for exactly this practice. NCLC and our co-counsel argued that these practices are an abuse of

process and are unfair and deceptive. Although the case was filed in state court, the defendant removed the case to federal court, where the judge found that the judicial proceedings privilege barred at least some of the claims. The judge certified a question with regard to the UDAP claim to the Supreme Judicial Court of Maine, where it is currently pending.

- Class Action Complaint (Exhibits 1-4, Exhibits 5-25)
- Certificate of Question to the Maine Supreme Judicial Court



The Institute for Foreclosure Legal Assistance

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