

# 3rd Circ. Upholds Class Cert. In PNC Lending Scheme Suit - Law360

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Law360, New York (July 30, 2015, 5:31 PM ET) -- The Third Circuit on Wednesday affirmed the certification of a nationwide litigation class of individuals suing [PNC Bank NA](#), which acquired a smaller bank accused of helping facilitate an illegal home equity lending scheme, finding PNC's challenge to issues of commonality and other certification criteria unpersuasive.

In a 62-page opinion, a Third Circuit panel found that a group of thousands of home mortgage borrowers, allegedly victimized in a predatory home lending scheme masterminded by a residential mortgage loan business based in Northern Virginia, could proceed as a certified class in its suit against PNC, which in 2007, purchased a bank alleged to have played a crucial role in that scheme.

The appeals court ruled that PNC had failed to raise convincing arguments that a general class and a group of five subclasses bringing claims for racketeering and violations of federal real estate, lending and homeownership laws had not met the required thresholds of ascertainability, commonality and other elements to obtain class status.

The panel also disagreed with PNC's argument that the class should be decertified because separate counsel wasn't appointed when subclasses were created, saying that wasn't a necessary prerequisite for certification because all of the class members are now capable of bringing all of their claims, and in theory, recovering all of their damages without impacting other class members.

"PNC has provided no reason to believe that, in this new context, the named class representatives of each subclass will not vigorously represent the interests of their fellow class members," the opinion said. "They are all pursuing damages under the same statutes and the same theories of liability, and the differences among them will not, at least as things presently stand, pit one group's interests against another."

The panel also disagreed with PNC's arguments that the trial court had improperly given the class conditional certification in order to conduct further discovery, saying that although the court articulated an expectation that discovery would vindicate its decision to grant class certification, there is no evidence showing that certification was indeed conditional.

The suit, first filed in the early 2000s and almost resolved through settlement on two occasions, alleges that the Shumway Organization, a mortgage lender based in Northern Virginia, associated itself with several banks in the 1990s in order to circumvent fee caps and interest ceilings imposed by various state mortgage lending laws in order to charge higher fees to mortgage borrowers, the opinion said.

According to the opinion, the plaintiffs allege that Shumway formed relationships with area banks, including the [Community Bank](#) of Northern Virginia — purchased by PNC after litigation began — in order to disguise the source of its loan origination services so that fees for those services would appear to be paid solely to the banks, which were depository institutions. Plaintiffs claim that CBNV, EquityPlus Financial Inc. and various title companies misrepresented home loan settlements to home buyers and provided Shumway with kickbacks for bringing in borrowers, the opinion said.

Six putative class actions, made up of 44,000 individuals, were filed in the early 2000s in response to the alleged scheme and consolidated in Pennsylvania in 2003, the opinion said. The consolidated class alleged violations of the Racketeer Influenced and Corrupt Organizations Act and the Real Estate Settlement Procedures Act, according to the opinion.

On two separate occasions in the following years, classes were certified after settlements were reached but those agreements were each successfully challenged by a group of plaintiff objectors, and overturned by the Third Circuit, the opinion said.

Finally in 2011, the original plaintiffs agreed to join with the objectors and litigate their claims as a newly consolidated class with subclasses, bringing new claims for violations of the Home Ownership and Equity Protection Act and the Truth in Lending Act.

Plaintiffs hope to recover compensatory and punitive damages.

In an email to Law360 on Thursday, plaintiffs' attorney Fred Walters of [Walters Bender Strohbehn & Vaughan PC](#), said his legal team and clients are pleased with the panel's "thoughtful and thorough" analysis of the class certification issues.

"We believe this opinion finally puts to rest the class certification issues in this matter after 10 plus long years of litigation," he said. "We on behalf of the 20,000-plus class members look forward to presenting their claims to a jury."

A representative for PNC declined to comment Thursday.

Plaintiffs are represented by R. Frederick Walters and David M. Skeens of Walters Bender Strohbehn & Vaughan PC, R. Bruce Carlson and Gary F. Lynch of [Carlson Lynch Sweet & Kilpela LLP](#), Scott C. Borison of Legg Law Firm, Robert S. Wood of [Richardson Patrick Westbrook & Brickman LLC](#), and Daniel O. Myers.

PNC is represented by Martin C. Bryce Jr. and Joel E. Tasca of [Ballard Spahr LLP](#).

The case is In Re: Community Bank of Northern Virginia Mortgage Lending Practices Litigation, case number [13-4273](#), in the U.S. Court of Appeals for the Third Circuit.

--Editing by Patricia K. Cole.

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