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§ 9:36 Disclosure gives the gift of immunity, or maybe not *[New]*

A Federal District Judge in Miami decides cases in a Circuit seemingly obsessed with the judicial notion that if the defendant just tells its victims what it is doing to them, then its disclosure immunizes it from all liability to them in a Court of law. In *Circeo-Loudon v. Green Tree Servicing, LLC*,¹ a defendant insurance company which provided lenders with force-placed insurance policies argued that all of the claims alleged against it should be dismissed because, although the claims were based on alleged “kickbacks,” the kickbacks had supposedly been disclosed by the lender, also a defendant in the case.

The District Judge granted the insurance company’s motion and dismissed all claims against the insurance company in that case. Following a Seventh Circuit decision in the case of *Cohen v. American Security Insurance Co.*² and an Eleventh Circuit decision in the case of *Feaz v. Wells Fargo Bank, N.A.*,³ the District Judge reasoned that “the meat of the allegations” showed the Court that the “substance” of the “transaction” was disclosed, so that there was no actionable claim of any kind. It appears from the rest of the opinion in this case that the plaintiffs’ claims against the insurance company included alleged RICO violations, unjust enrichment, tortious interference with a business relationship and tortious interference with a contract, as to each of which claims the Court found further infirmities which required dismissal. Further, the District Judge in that case was of the opinion, following the Eleventh Circuit’s *Feaz* decision, that kickbacks do not cause “divided loyalties” and so they cannot be illegal.⁴

The argument that disclosure confers immunity against

all claims was also made to a different Federal District Judge, this time in the Central District of California, in the case of *Longest v. Green Tree Servicing LLC*.⁵ However, the District Judge rejected the argument in that case and thereby set up a potential conflict with the Federal Court in Miami. In *Longest*, the District Judge followed a long line of holdings in similar cases in rejecting the argument that a defendant's disclosure meets the "meat of the allegations" and thereby dispenses immunity against liability under any and all claims.

The District Court simply pointed out that just because the contract documents may have authorized the defendants to place insurance by force does not mean that the contract documents also authorized the defendants to force-place charges for what were alleged to be "*unauthorized kickbacks*" as a part of the insurance premiums charged to the borrower.⁶

Moreover, as in the case in the Southern District of Florida, in *Longest* the defendants again relied on the Seventh Circuit's *Cohen* decision and the Eleventh Circuit's *Feaz* decision. Reliance on both of these decisions is unsurprising, but reliance on the Eleventh Circuit's decision was to be expected because at least some of the plaintiffs in *Longest* presented their class action claims under Florida law.

The District Judge distinguished both *Cohen* and *Feaz* not simply on the ground as being decided in foreign Circuits, but also on the ground that, assuming without deciding that they were correctly decided on their facts, that both decisions involved "merits-based arguments" which are more appropriate for a motion for summary judgment than a motion to dismiss.⁷

¹*Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-21384-CIV, 2014 WL 4219587 (S.D. Fla. August 25, 2014).

²*Cohen v. American Security Ins. Co.*, 735 F.3d 601, 609 (7th Cir. 2013).

³*Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098, 1111 (11th Cir. 2014).

⁴*Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-21384-CIV, 2014 WL 4219587 (S.D. Fla. August 25, 2014).

⁵*Longest v. Green Tree Servicing LLC*, 74 F. Supp. 3d 1289 (C.D. Cal. 2015).

⁶*Longest v. Green Tree Servicing LLC*, 74 F. Supp. 3d 1289, 1296, 1297-98 (C.D. Cal. 2015).

⁷*Longest v. Green Tree Servicing LLC*, 74 F. Supp. 3d 1289, 1297 (C.D. Cal. 2015).