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DAILY REPORT

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Loan insurance class action settles for \$45 million

JMIC LIFE INSURANCE settled the case about refunding unearned premium after weighing the costs, spokeswoman says

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A NATIONWIDE CLASS action over insurance policies that consumers buy when they take out retail loans has settled for \$45 million.

Muscogee County Superior Court Judge Douglas C. Pullen preliminarily approved the settlement Oct. 31. That means consumers who say JMIC Life Insurance Co. owes them part of their insurance premiums will get an as-yet-to-be-determined amount of money.

It's a "really good" settlement for the class members, said class co-counsel James E. Butler Jr. Butler, Wooten & Fryhofer in Columbus. But it's only one of several cases still pending. "One down, several more to go," said Butler.

The settlement agreement provides that JMIC will not object to an attorney fees award of up to one-third of the \$45 million to class counsel, according to Butler,

who noted that the court would make the final call on fees.

The litigation is over what are called credit life and credit disability insurance policies, which consumers buy when they take out a loan to buy, for example, a car. The policies cover payment of the loans in case the consumer dies or is disabled before he can pay off the loan. The premiums for such policies usually are paid once up front and rolled into the loan.

The named plaintiff in the JMIC case, Ken Toole, purchased a used car in 2001, obtaining a JMIC policy with a \$994.89 one-time premium. After paying off the loan early, in July 2002, he sued JMIC, saying the company violated the terms of his policy by not providing him with a refund of the unearned portion of the premium.

"All the insurers admit that they have no claim to the unearned premium," Butler said of the various credit life insurance cases he's pursued. "But they've been

keeping hundreds of millions of dollars—the industry as a whole—for years."

JMIC acknowledged in court filings that if insurance coverage ceases before its scheduled expiration date—JMIC allows an insured to cancel coverage for any reason at any time, its lawyers



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James Butler and other lawyers will share up to one-third of \$45 million.

explained in a filing—customers can get back unearned premiums. The insurance company said in a filing that, over a 10-year period, JMIC paid more than \$175 million in unearned premium refunds to more than 480,000 insureds.

But JMIC's lawyers wrote that many states, including Georgia, require the customer to notify the insurer before a refund must be paid. "No law or regulation anywhere requires JMIC to monitor its insureds' financing, and there is no practical need to do so," they wrote. Until a customer makes a claim, said JMIC, the insurance company doesn't have the need—or right—to monitor the insured's financing information.

A spokeswoman for Deerfield Beach, Fla.-based JMIC, Anne-Beth Nemeroff, said Thursday that the company has denied wrongdoing from the very beginning of the case.

"JMIC has honored every customer request for a refund that it has received," said Nemeroff. "The allegations in this case centered on customers who did not notify us of the early termination of their loan which would have given rise to refunds of unearned premiums."

About 768,000 people will be notified of the settlement, said Butler, explaining those are the people who had JMIC insurance within the relevant statute of limitations periods in their states. He said settlement administrator Rust Consulting will determine who of those terminated their loans early and when, to figure out which ones are due refunds.

According to Butler, under the

settlement agreement each class member can get up to what he or she is owed, plus another one-third. Class members may receive less than all that they are owed depending on how many there are, said Butler, but he said that was unlikely. Pullen's order also provides that administration costs and payment to class counsel will come out of the \$45 million, and Butler said that any leftover money will go into a remainder fund to be used for charitable consumer rights purposes.

"The fundamental truth of these cases is there's no defense to payment of the unearned premium refunds," said Butler, "so the only issue is how do we determine who's entitled to refunds, and how do we get those checks to them. The cases are that simple."

Butler's attempts to get information on who's entitled to refunds has been just one point of contention in the litigation. When it settled last month, the case already had taken several trips to the state's appellate courts.

Pullen denied JMIC summary judgment and certified the case as a class action in 2005. Last year, a panel of the state Court of Appeals upheld those rulings and the state Supreme Court refused to review that decision.

That was only the beginning of the appellate fighting between the parties. Early last month, JMIC had an appeal pending over the orders requiring JMIC to gather information on potential class members, information JMIC said it would need to get from lenders and other third parties. In an Oct. 10 brief, JMIC's lawyers

said the company already had spent more than \$1.6 million to begin the process of providing the information required by the court.

But on Oct. 22, the case settled.

Nemeroff, the JMIC spokeswoman, said JMIC decided to settle the case after weighing the costs of defending such a complex matter.

Butler surmised that JMIC decided to settle based on an order entered early last month. In that order drafted by plaintiff's counsel, Pullen said he was convinced that JMIC didn't intend to comply with his earlier orders that it provide information on its insureds, including its insured's loan termination dates. Pullen then appointed a special master to supervise compliance with the earlier rulings.

"I presume that once that order was entered," said Butler, "JMIC saw that the job was going to be finished and there wasn't any point in paying any more lawyers' fees."

Besides Butler and class co-counsel Columbus lawyer Samuel W. Oates Jr., the plaintiff class is represented by other lawyers at Butler Wooten; the Columbus firms of Hatcher, Stubbs, Land, Hollis & Rothschild, Philips-Branch and The Law Offices of Charles A. Gower; and the Atlanta firm of Bondurant, Mixson & Elmore. JMIC is represented by the Washington firm of Williams & Connolly; the Columbus firm of Page, Scramton, Sprouse, Tucker & Ford; the Atlanta firm of Rogers & Hardin; and the Atlanta office of Holland & Knight. ☞