

May 1, 2010
Association of Appraiser Regulatory Officials
San Diego, CA



Litigation About Appraisals Delivered by AMCs

- Class actions numerous – following the model created by Cuomo v. First American eAppraisal
- Individual consumer cases increasing:
 - Alleging failure of AMCs to manage appraisal process
 - Alleging negligence on the part of AMC
 - Often naming appraisers also, but not always
 - Will likely increase more with state regulation of AMCs
- Litigation may “regulate” or change AMC behaviors
 - Quality control measures
 - Appraiser selection -- led to the HVCC



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK
by ANDREW M. CUOMO, Attorney General of
the State of New York.

Complainant, COMPLAINT

-against- Index No.

FIRST AMERICAN CORPORATION and
FIRST AMERICAN EAPPRAISEIT,

Defendants.

1. This action is brought by Plaintiff, the People of the State of New York, by Andrew M. Cuomo, Attorney General of the State of New York ("Attorney General"), based upon the Attorney General's authority under Article 22-A of the General Business Law, Section 63(12) of the Executive Law, and the common law of the State of New York.

2. Plaintiff, complaining of the above-named defendants, alleges upon information and belief as follows.

THE RELEVANT ENTITIES

3. First American Corporation ("First American") is, according to its 2006 annual

report, "America's largest in 2006. First American Specialty Insurance, Information, and Risk directly and through i

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

GRANT A. GOMEZ and LANIE L. GOMEZ, on behalf of themselves and all others similarly situated,

Plaintiffs,

WELLS FARGO BANK, N.A. and
VALUATION INFORMATION
TECHNOLOGY, LLC, d/b/a RELS
VALUATION,

Defendants.

No.

CLASS ACTION COMPLAINT
(Violations of 18 U.S.C. § 1962; 12 U.S.C. § 2607; Cal. Bus. & Prof. Code § 17200, et seq.; Unjust Enrichment; Breach of Fiduciary Duty)

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NATHANIEL JOHNSON and KRISTEN PETRILLI, ABRAHAM NIETO, GLORIA and CHARLES LEWIS, FABIAN and MARIA PATRON, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

KB HOME - Delaware corporation;
COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation,
COUNTRYWIDE HOME LOANS, INC. - a New York corporation; COUNTRYWIDE MORTGAGE VENTURES, LLC, a Delaware

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SOUND APPRAISAL and SAVAGE APPRAISAL SERVICES, INC., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK N.A. and
VALUATION INFORMATION
TECHNOLOGY, LLC, d/b/a RELS
VALUATION,

Defendants.

No.

CLASS ACTION COMPLAINT
(Violations of 18 U.S.C. § 1962; Cal. Bus. & Prof. Code § 17200, et seq.; Unjust Enrichment)

DEMAND FOR JURY TRIAL

CV No. 09 1630

CLASS ACTION COMPLAINT
(Violations of 18 U.S.C. § 1962; 12 U.S.C. § 2607; Cal. Bus. & Prof. Code § 17200, et seq.; Unjust Enrichment; Breach of Fiduciary Duty)

DEMAND FOR JURY TRIAL

IN THE CHANCERY COURT FOR ROANE COUNTY, TENNESSEE

JOSEPH S. MOORE, individually and as trustee of the Joseph S. Moore and Kathryn Moore Revocable Trust, Dated May 20, 1994,

Plaintiff,

v.

WELLS FARGO BANK, N.A., a National Banking Association; SOUTHEAST HOME MORTGAGE, LLC, a Delaware limited liability company; VICKI WILLIAMS, an individual resident of the State of Tennessee; VALUATION INFORMATION TECHNOLOGY, LLC, f/k/a and/or d/b/a RELS VALUATION, an Iowa limited liability company; JIM L. PEMBERTON, JR., an individual resident of the State of Tennessee; SAIL AWAY HOMES AND LAND, a Tennessee General Partnership; BOB GILTINANE, an individual resident of the State of Tennessee, individually and as general partner of Defendant Sail Away Homes and Land, RON HILLMAN, an individual resident of the State of Tennessee, individually and as partner of Defendant Sail Away Homes and Land, MARY GILTINANE, an individual resident of the State of Tennessee, as partner of Defendant Homes and Land

MARK HERBERT and MICHELLE HERBERT

Defenda

Plaintiff,

vs.

BANK OF AMERICA CORPORATION, LANDSAFE SERVICES, LLC

Defendants.

No. 116640

No. 10c/v0242

IN THE DISTRICT COURT

OF GALVESTON COUNTY, TEXAS

12th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now Come Plaintiffs, MARK HERBERT and MICHELLE HERBERT, and file this Original Petition against Defendants, BANK OF AMERICA CORPORATION and LANDSAFE SERVICES, LLC, and respectfully show the Court the following:

PARTIES

- 1. Plaintiff MARK HERBERT is an individual who resides in Golden, Colorado.
- 2. Plaintiff MICHELLE HERBERT is an individual who resides in Golden, Colorado.
- 3. Defendant BANK OF AMERICA CORPORATION is a Delaware corporation maintaining offices and place of business in Galveston County, Texas ("BOA"). BOA can be served with process by serving its registered agent CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.
- 4. Defendant LANDSAFE SERVICES, LLC (f.k.a. HomeFocus Services, LLC) is a Missouri corporation maintaining offices and place of business in Galveston County, Texas ("Landsafe"). Landsafe can be served with process by serving its registered agent CT Corporation

Plaintiffs' Original Petition

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Code
DA



AMC/Appraiser Agreements

As states regulate AMCs they will be, or should be, looking at AMC/Appraiser agreements. They address things like:

- Appraisal turn times
- Prohibitions against appraisers disclosing fees to consumers
- Appraiser communications
- “Indemnity Clauses” – a hot button with appraisers
- (Side note: Many appraisers are afraid to call AMCs with questions about issues in an assignment.)



Typical AMC/Appraiser Agreement

APPRAISER AGREEMENT

THIS APPRAISER AGREEMENT is effective as of [redacted] day of [redacted] and represents an agreement between [redacted] with its principal place of business and [redacted] and/or permitted subcontractor Agreement, with its principal place of business [redacted].

[redacted] is engaged in the business of mortgage lenders/banks through an independent contractor that [redacted].

Appraiser acknowledges and agrees for the benefit of various mortgage transactions and the parties mortgage lenders/banks are intended through this Agreement.

Therefore, in consideration contained herein and for other reasons which is hereby acknowledged working as an independent contractor following provisions set forth be:

1. SERVICES.

On occasion, [redacted] of which are hereby deemed appraisal services to be including but not limited to: At all times, Appraisal shall be performed with the terms and conditions set forth in the agreement for performing services must (including any applicable law) and specific means and methods.

2. DUTIES AND RESPONSIBILITIES.

- a. **Real Estate Appraisers Professional Liability Insurance.** Appraiser agrees that Appraiser will, at all times during the Term of this Agreement, maintain either a blanket policy of Real Estate Appraisers Professional Liability Insurance (Errors and Omissions Liability coverage) (hereinafter referred to as "Insurance"), that covers all Officers, Directors, Employees or

- f. **Acceptance of Appraisal Request, Delivery of Reports.** Appraiser agrees that at all times during the term of this Agreement, Appraiser shall:
- Notify [redacted] of Appraiser's declination of an appraisal order within twenty-four (24) hours of receipt of the appraisal order.
 - Notify [redacted] if the Appraiser's main office is more than seventy-five (75) miles from the property to be appraised, within twenty-four (24) hours of receipt of the appraisal order.
 - Notify [redacted] of Appraiser's request for fee adjustments within twenty-four (24) hours of receipt of the appraisal order.
 - Contact the property owner to schedule an appraisal within twenty-four (24) hours of receipt of the appraisal order, and communicate all appointment dates and/or the status of any delay in scheduling the appraisal to [redacted] within such twenty-four (24) hours of the inspection.
 - Communicate any issues regarding completion of an appraisal within the time specified as the anticipated completion date to [redacted] within twenty-four (24) hours of the inspection.
 - Deliver all hardcopy appraisal reports to Company within two (2) days of the inspection.
 - Include the subscriber order number in the subject line of any correspondence forwarded to [redacted] regarding the appraisal, including but not limited to all email correspondence and email correspondence forwarding the appraisal report.
 - Include a separate invoice with all appraisal reports transmitted to [redacted]. Appraiser understands that if an appraisal report is transmitted without a separate invoice, the services will be billed a standard fee as determined by [redacted] at its absolute and sole discretion. The Appraiser's fees for the services are not to be included in, or affixed to, the appraisal report.
 - Direct all communications concerning the services to [redacted]. Appraiser understands and agrees that with the exception of

7. INDEMNIFICATION.

- a. Appraiser shall indemnify, defend, save and hold harmless [redacted] from and against any and all liability, claims, damages, losses, fines, judgments, suits, decrees, costs and expenses (including but not limited to reasonable attorney fees and other costs, fees and expenses that [redacted] may incur in any way related to or resulting from the following:
- Any act, or failure to act, or any breach of any warranty, obligation, representation or covenant contained in or made pursuant to this Agreement by Appraiser, its employees, agents or representatives;
 - As a result of the action, negligence or omission by Appraiser or its employees, agents or representatives, or anyone contracting with Appraiser;
 - The breach of any of the representations, warranties or covenants contained in this Agreement that materially and adversely affects the value of a loan made in relation to an appraisal report submitted to [redacted] by Appraiser; or
 - Any appraisal report submitted to [redacted] by Appraiser pursuant to this Agreement.
- b. In addition to any and all other obligations of Appraiser hereunder; and any and all other remedies available to [redacted] under this Agreement, Appraiser agrees that if a mortgage lender/bank is required to repurchase a mortgage loan for any reason in any way related to or resulting from:
- Any act, failure to act, or any breach of any warranty, obligation, representation or covenant contained or made pursuant to this Agreement by Appraiser, its employees, agents or representatives;
 - As a result of the action, negligence or omission by Appraiser or its employees, agents or representatives, or anyone contracting with Appraiser; or
 - Any appraisal report submitted by Appraiser pursuant to this Agreement;
- Appraiser shall pay [redacted] an amount equal to the repurchase price paid by such mortgage lender to repurchase such mortgage loan. Appraiser agrees that it shall pay all reasonable attorney fees incurred by [redacted] in enforcing Appraiser's obligations, including but not limited to, the obligation of Appraiser to pay [redacted] an amount equal to the repurchase price of a mortgage loan as set forth above. The obligation of Appraiser shall survive the termination of this Agreement.



Liability Insurance Administrators

Another Indemnification Clause (Copycat AMC)

7. **GENERAL INDEMNITY.** Appraiser agrees to indemnify, defend, save and hold harmless Company from and against any and all liability, claims, damages, penalties, losses, fines, judgments, suits, decrees, costs and expenses, including reasonable attorney fees and any other costs, fees and expense that Company may sustain in any way related to or resulting from: [...] (iv) any appraisal report submitted to Company by Appraiser pursuant to this Agreement.

In addition to any and all other obligations of Appraiser hereunder, and any and all other remedies available to Company under this Agreement, Appraiser agrees that if a mortgage lender is required to repurchase a mortgage loan for any reason in any way related to or resulting from [...] (iii) any appraisal report submitted by Appraiser pursuant to this Agreement, Appraiser shall pay Company an amount equal to the repurchase price paid by such mortgage lender to repurchase such mortgage loan.



Some AMCs “Warrant” Their Appraisals

Typical Warranty from a Large AMC

“AMC protects the Lender against an actual financial loss, through default or foreclosure, which is the direct and primary result of an inaccurate valuation due to material appraisal defect or material misrepresentation as discovered through a reputable retrospective or forensic appraisal analysis. Specifically, should a qualified Warranted Appraisal fail to comply in material respect to the Uniform Standards of Professional Appraisal Practice and/or FNMA, FHLMC, FHA Appraisal Standards existing on the effective date of the appraisal, and the Lender sustains an out-of-pocket economic loss through default or foreclosure as a direct result thereof, AMC will pay the loss subject to the terms and conditions set forth herein. . . .”



Some Lenders Require AMCs to Indemnify Them

“6. Indemnification. Appraisal Management Company (“AMC”) shall be liable to, and indemnify and hold harmless, Subprime Lender for any damages, liabilities, claims, causes of action or other amounts (the “Liabilities”) which are related to, or the result of, any Appraisal Report submitted to Subprime Lender which is deemed to be a misrepresentation. Subprime Lender may deem an Appraisal Report a misrepresentation when: (1) Subprime Lender has reasonably determined that the actual value of the real property that is the subject of the Appraisal is materially less than the value reported in the Appraisal; or (2) other data used in the Appraisal is determined to be a misrepresentation such as, but not limited to, misrepresenting sales dates and/or sales prices, incorrect photos (subject and/or comparables), comparables from outside subject neighborhood (without supporting logic), not fully disclosing material facts, or violating state licensing laws or (3) a new historic appraisal from an independent appraiser reasonably acceptable to both Subprime Lender and AMC indicates that the appraised value of the real property as reported in the subject Appraisal is 10% greater than the average of the appraised value reported in the new appraisal.

7. Repurchases. AMC acknowledges that an Appraisal on a closed loan that does not meet the Performance Levels may cause Subprime Lender to, among other things, repurchase a loan from an investor or incur other Liabilities. AMC shall be liable to, and indemnify and hold harmless, Risky Lender for all of the Liabilities, which are related to, or the result of any Appraisal Report or other Service submitted to Subprime Lender, which does not meet the Performance Levels.”

Public Policy Issues

- First – what does not having an indemnification provision mean?
- Individual appraisers agree to provisions like this because they lack power to say “no”
- Potentially insulate AMCs from full responsibility for their own failures (contrary to the notion that “you have to clean up your own mess”)
- Contribute to the fear instilled in many appraisers that is presently causing appraisals to “come in low”

(We are not seeing claims about appraisals in 2009 or 2010 being inflated – the issue being complained about most with regard to current appraisals is undervaluation)



Washington State –Prohibition Against AMCs Requiring Indemnification for AMC's Misdeeds

(o) Requiring an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents, employees, or independent contractors for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser.

