

Unconscionable Inducement of Consumer Credit in West Virginia Requires Intentional Bad Acts

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A recent amendment to [§ 46A-2-121 of the West Virginia Consumer Credit and Protection Act](#) (the WVCCPA) clarifies that for a consumer loan to have been unconscionably induced, the loan originator must have made “affirmative misrepresentations” or engaged in “active deceit or concealment of a material fact.”

In [McFarland v. Wells Fargo Bank, N.A.](#), the U.S. Court of Appeals for the Fourth Circuit interpreted this subsection of the WVCCPA to provide borrowers with a claim for unconscionable inducement apart from a claim that the resulting transaction was, itself, unconscionable. The Fourth Circuit was predicting how the West Virginia Supreme Court likely would interpret the language of the subsection, although the West Virginia Supreme Court had not done so before.

The Fourth Circuit went on to say that “[w]e of course leave to West Virginia law the precise contours of an unconscionable inducement claim, but it appears that [an unconscionable inducement claim] will turn not on status considerations that are outside the control of the defendant, but instead on affirmative misrepresentations or active deceit.”

Recently, the state legislature amended the WVCCPA in accord with the Fourth Circuit’s statement. Unconscionable inducement now will require proof of “unconscionable conduct such as affirmative misrepresentations, active deceit or concealment of a material fact.” The clarifying amendment will be effective June 8, 2016.

How West Virginia’s courts apply this specific language remains to be seen. For now, the Legislature has provided a clear indication that unconscionable inducement requires intentional bad acts, such that courts have guidance on the severity of the acts that must be proven to establish unconscionable inducement.

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