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Welcome!

Welcome to August's issue of *All Consuming*. This month, we are taking a deep dive into discharges in bankruptcy and then reviewing several top news stories in the world of consumer finance. We hope you find value in our content. If there are any particular topics or areas you would like to read in future editions of *All Consuming*, please [let us know](#).

Thank you for reading.

[Spilman Thomas & Battle's Consumer Finance Practice Group](#)

The Discharge in Bankruptcy - Open Avenues for Consumer Creditors

By [Travis A. Knobbe](#)

In a typical consumer bankruptcy, a debtor seeks the benefit of two concepts. First, the debtor seeks the breathing room afforded that debtor by the automatic stay. Second, the debtor seeks to discharge all debt obligations adjudicated in the bankruptcy case. Absent these protections, a bankruptcy filing serves little purpose. As a result, a creditor who can attack the debtor's entitlement to a discharge threatens the very heart of any filing.

Click [here](#) to read the entire article.

Two Mortgage Companies Hit With Over \$1M in Fines by CFPB

"The bureau found that the companies mailed consumers advertisements for VA-guaranteed mortgages that contained false, misleading, and inaccurate statements or lacked required disclosures."

Why this is important: The consent orders with these two mortgage companies make apparent the CFPB's focus on the accuracy of advertisements during the loan solicitation process. The CFPB took issue with numerous items in the companies' direct-mail advertisements, including interest rate descriptions, inferences of affiliation, and alleged failures to disclose and comply with the requirements of Regulation Z. As the CFPB began investigating multiple mortgage companies relating to direct-mail advertisements due to concerns, it is likely these consent orders are just the beginning and provide insight into the information the CFPB may focus on during its investigations. --- [Angela L. Beblo](#)

Bank of America Settles Fair Housing Act Discrimination Claims, Agrees to Pay Damages

"According to the civil complaint, the United States alleged that, between January 2010 and 2016, the Bank maintained a policy of denying mortgage loans and, between January 2010 and 2017, home equity loans, to adults with disabilities who were under legal guardianships or conservatorships."

Why this is important: A proposed settlement agreement between the United States and Bank of America was recently filed, resolving claims that Bank of America purportedly violated the Fair Housing Act by allegedly denying mortgage loans and home equity loans to adults with disabilities who were under legal guardianships or conservatorships. Bank of America previously took corrective action regarding the allegedly discriminatory practices. The settlement terms require that Bank of America make a payment of roughly \$300,000 in total to compensate alleged victims, maintain its new nondiscriminatory policy and train employees on the policy, monitor its loan processing and underwriting activities for Fair Housing Act compliance, and report to the United States every six months for the next two years. This shows the importance of regularly monitoring loan processing and underwriting policies for compliance with the Fair Housing Act. --- [Wesley A. Shumway](#)

Wells Fargo Mortgage Customers are Claiming the Bank Put Them on Forbearance Without Asking

"Mortgage customers in at least 14 states have reported that the bank put them on forbearance plans that they did not request, preventing them from making intended payments on their loans."

Why that is important: Because mortgage interest rates are so low, many borrowers are using this time to refinance their mortgages at a lower rate. However, most banks will not sign off on a refinance if a borrower's payments have been paused. What may have been an attempt to provide relief for borrowers ultimately creates more problems for those looking to save money on their long-term investments. --- [Tai Shadrick Kluemper](#)

The OCC's Notice on Crypto is a Really Big Deal

"The letter, addressed to an unnamed bank, is remarkable in its progressive embrace of the crypto industry, explicitly permitting banks to both custody cryptoassets for customers and provide banking services for crypto-oriented businesses."

Why this is important: As the cryptocurrency industry matures, it often has suffered from a lack of the availability of traditional banking services to crypto-focused companies. This article is important because it discusses the recent letter from the Office of the Comptroller of Currency that banks may provide cryptocurrency custody services for customers and also traditional banking services to crypto-focused businesses. The article interprets the OCC's letter as bold and progressive as well as a possible catalyst for other regulators to follow suit. It also discusses three reasons the author sees for how this letter will foster the maturity of the cryptocurrency industry --- [Nicholas P. Mooney II](#)

Gray v. Federal National Mortgage Association

"In this appeal, we consider the applicability of the doctrine of collateral estoppel to an order by a clerk of court authorizing a trustee to conduct a sale in a non-judicial foreclosure proceeding pursuant to a deed of trust."

Why this is important: Previously, in *In re Lucks*, 369 N.C. 222, 794, S.E.2d 501 (2016), the North Carolina Supreme Court held that in a situation where the Clerk of Court did not authorize a foreclosure sale that "traditional doctrines of res judicata and collateral estoppel applicable to judicial actions do not apply" for several reasons. More recently, in *Gray*, the non-judicial foreclosure sale was authorized by the Clerk of Court, and the foreclosure sale was successfully conducted. A year later, the plaintiffs sued the trustee and Fannie Mae to nullify the sale and for damages allegedly incurred as a result of the foreclosure sale. The facts in *Gray* are the exact opposite than in *Luck*. As a result, the Court of Appeals read the holding in *Luck* very narrowly and determined that the holding in *Luck* only applies when the Clerk of Court does not authorize the foreclosure sale in the non-judicial foreclosure. In *Gray*, the Court of Appeals determined that res judicata and collateral estoppel must apply foreclosure sales in non-judicial foreclosures authorized by the Clerk of Court, otherwise creditors would have to re-litigate basic issues related to the validity of the foreclosure, which were already decided in their favor by the Clerk of Court. The decision in *Gray* is a decisive victory for lenders and creditors. The North Carolina Court of Appeals' ruling in *Gray* puts the onus on the debtor to raise all claims before the Clerk of Court, or on appeal to the trial court. Failure to do so forever waives the debtor's claims. The holding in *Gray* provides

creditors with a definitive answer regarding the finality of a foreclosure sale authorized by the Clerk of Court. Additionally, the decision in *Gray* can be used by creditors to prevent post-sale litigation by the debtor following an authorized foreclosure sale by the Clerk of Court. --- [Alexander L. Turner](#)

Featured Attorney Spilman Profile



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Tai Shadrick Kluemper is Counsel in Spilman Thomas & Battle's Charleston, West Virginia office. Her primary area of practice is litigation, with emphasis on consumer finance litigation and product liability litigation. She assists in the defense of financial institutions and other creditors in litigation involving alleged violations of state and federal consumer credit protection laws. In addition, she represents and advises clients regarding numerous federal and state consumer protection laws.

In addition to her role as Counsel, Ms. Shadrick Kluemper serves as the Assistant Associate Supervisor and Assistant Chair of Recruiting.

Ms. Shadrick Kluemper has been listed by West Virginia Super Lawyers as a Rising Star. She is the Young Lawyer Liaison to the Deposit Products and Payment Systems Subcommittee for the American Bar Association.

She earned her bachelor's degree at Towson University, her M.Ed. from Frostburg State University, and her J.D. from West Virginia University College of Law.



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