

FIRM SUCCESSFULLY DEFENDS CLASS ACTION LAWSUIT

Effective July 1, 2005, the Wisconsin law requires all mortgage brokers to use mortgage broker agreements and consumer disclosure statements in a form prescribed by the Wisconsin Department of Financial Institutions (“WDFI”) with their consumer clients. See Wis. Stat. § 224.79. The WDFI has stated that “no change to the wording of either form is acceptable or approved.” McGlone Mortgage Company, Inc. (“McGlone”), a Wisconsin licensed mortgage broker, did not begin using the WDFI prescribed forms until July 2008.

On February 20, 2009 John J. Avudria filed a class action lawsuit against McGlone on behalf of all persons who retained McGlone from July 2005 to July 2008, alleging that McGlone’s failure to use the WDFI prescribed forms during that period of time entitled them to damages of twice the amount of the loan origination fees charged by McGlone or their actual damages, whichever is greater, pursuant to section 224.80(2), Wis. Stats. John J. Avudria v. McGlone Mortgage Company, Inc., Milwaukee County (WI) Case No. 09-CV-2782.

Dean P. Laing of our firm represented McGlone in its defense of this class action lawsuit. On February 3, 2010 Mr. Laing filed a motion for summary judgment on behalf of McGlone, seeking dismissal of the lawsuit on various legal grounds.

On June 17, 2010 the trial court, the Honorable William W. Brash III, presiding, granted McGlone’s motion for summary judgment and dismissed the class action lawsuit, in its entirety, on the following legal grounds: (1) the statutes require a person to be “aggrieved” by a mortgage broker’s failure to use the State prescribed forms in order to state a claim upon which relief can be granted, meaning that the person must have suffered actual damages as a result thereof, which the plaintiff admitted in his deposition he did not, and (2) the statutes were not designed to allow claims against mortgage brokers which “inadvertently” fail to use the State prescribed forms, as the statutory scheme is aimed at egregious, not innocent, conduct.