MANAGING RISK in a Collateral Protection Insurance Program

Legal Update

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During the 1980s and 1990s, many lenders faced litigation arising out of their practices in insuring collateral where borrowers failed to do so. Lender-purchased insurance is referred to as "Collateral Protection Insurance," "CPI," or force-placed insurance. A small group of plaintiffs' class action lawyers turned CPI litigation into something of a cottage industry. Most major lenders faced CPI litigation, and as a result took affirmative steps to minimize the risks of future CPI litigation.

The vast majority of CPI lawsuits settled without a determination on the merits (or lack thereof) of the claims alleged. In some cases, lenders achieved class action settlements that provided for the lender's continued use of CPI under specified conditions. In other cases, lenders simply opted to "go bare" and assume all of the expense and risk of loss associated with uninsured collateral. Between these two scenarios, a review of CPI litigation to date shows that lenders can do many things to minimize risk while minimizing the costs associated with their borrowers' failure to provide adequate insurance.

The best means of minimizing the risk of CPI litigation exposure is to provide adequate disclosure when the loan is originated with subsequent disclosures as needed. Even where there has been sufficient disclosure, the lender needs to closely scrutinize commissions, rebates, and tracking charges.

The following is intended as a preliminary guide to maintaining a CPI program that is less likely to be the focus of litigation. This information is not intended as legal advice, and it is not a substitute for the lender consulting with its own attorneys to insure full compliance with applicable laws and regulations.

OVERVIEW OF CPI ISSUES

Many financial institutions are often forced to defend themselves in lawsuits stemming from their lawful business activities. Simply knowing that a lawsuit might be filed should not, and has not, led lenders to close their doors for fear of litigation. However, good business practices demand that the lender make an ongoing effort to minimize the risks associated with such litigation and try to avoid claims wherever possible.

Lenders are often targets for claims arising from fees and other charges applied where borrowers default on their loan obligations, and the use of CPI programs that did not make adequate disclosures got the most attention. Insurance companies and agents were also named in a few of these lawsuits, though they were rarely the primary targets. Typically, lenders chose to settle these cases because of the uncertainties of litigation. Some lenders successfully fought many CPI lawsuits, but usually at significant expense.

THE NATURE OF CPI

The typical documents for an automobile loan obligate the borrower to maintain acceptable insurance on the collateral securing the loan. Under the agreement, absent proof of acceptable insurance, the lender has the right to either repossess the collateral or place insurance to protect the collateral. If the lender chooses to place insurance, the lender typically advances the policy premium and adds the cost to the balance of the borrower's loan.

CPI is generally narrower in scope and more expensive than the "conventional" insurance that would be obtained by a borrower with a good driving record. Conventional (borrower-purchased) insurance generally includes coverage for liability and property damage, as well as other coverages such as uninsured motorist coverage. The lender-placed policy typically provides only property insurance for the value of the collateral up to the amount of the loan balance in the event that the collateral is damaged or destroyed. Even with narrower coverage, the premiums associated with CPI are generally higher than for borrower-purchased insurance for several reasons. First, the lender-placed insurer typically insures the collateral for all defaulted loans within a lender's portfolio without any information on borrowers' driving records. In many cases, the reason a borrower does not have acceptable insurance in place is that he or she was cancelled or nonrenewed by their prior insurer. As a practical matter, borrowers who default on their loan obligations also tend to be significantly higher risks than the rest of the population. While the cost of lender-placed insurance is usually higher than what the borrower could obtain on his or her own, the exceptions are numerous. Many borrowers with CPI insurance would only be able to obtain minimal liability insurance under "assigned risk" programs, and would not be able to obtain insurance for physical damage to the automobile except at very high prices. For these reasons, it is sometimes the case that CPI is actually the cheapest insurance available for some borrowers. Additionally, some CPI programs utilize risk-based rates that are not significantly higher than normally underwritten insurance would be for similar type and location of vehicle.

Typically, CPI provides a policy under which both the borrower and the lender have the right to receive insurance benefits. (Generally, the lender is entitled to payment first; the payment reduces the loan balance. In some cases, while the borrower is not listed as an insured, he or she may have the ability to submit a claim.) In most cases, the lender is the named insured on a "master policy." The CPI insurer monitors the existence of insurance on the lender's entire portfolio. When a borrower fails to provide proof of adequate insurance on the collateral, the insurer, on behalf of the lender, issues one or more notices to the borrower reminding the borrower of his or her obligation to provide proof of acceptable insurance. If such proof is not timely received, the insurer issues a notice to the borrower indicating that insurance has been placed on the vehicle. The lender advances the premium for the insurance, and charges it to the defaulting borrower's account. The additional loan balance is either collected as part of a higher monthly payment or via a longer term. In the event of damage to the vehicle, either the lender or the borrower may make a claim.

In the past, lenders sometimes received rebates or commissions in connection with the placement of CPI. As explained below, rebates and commissions were a particular target of plaintiffs' lawyers in CPI litigation. Via CPI, many lenders effectively outsource tracking insurance on the lender's loan portfolio. The manner in which this "outsourcing" is billed or not billed has also been a subject of CPI litigation.

While most lenders' loan documents provide the lender with the right to purchase insurance at the borrower's expense, historically, the disclosures in loan documents often did not cover all of the lender's conduct. As is typical with consumer litigation of this type, plaintiffs' most forceful arguments were based on the extent of the disclosure by the lender at the time the loan was made. Lenders faced special difficulty where the court perceived that the loan agreement provided that the lender would act in a certain manner, when in fact, the lender acted in a different manner. If the lender clearly and conspicuously discloses the terms that will apply in the event that the borrower fails to maintain adequate insurance, the likelihood of litigation or liability should be significantly reduced.

COMMON PLAINTIFFS' THEORIES

Plaintiffs' attacks on CPI programs typically focused on lender behavior that borrowers characterized as opportunistic. The complaints challenged issues such as the cost of the CPI policy, administrative or tracking fees charged to the borrower, interest charged on the CPI premium, the scope of the CPI coverage, the amount of the CPI coverage, commissions and rebates received by the lender, backdating and the lender's choice of the insurance agent or provider.

CPI litigation often involved both federal and state claims. Under federal law, plaintiffs' primary claim was that lenders' practices violated the Truth in Lending Act. In essence, plaintiffs contended that the specific costs and charges associated with CPI were not disclosed at the time of the loan application. Plaintiffs also claimed violations of the Bank Holding Company Act, alleging that the lender tied credit to the placement of CPI or that lender coverages were tied to procuring the physical damage part of CPI. In addition, plaintiffs claimed violations of the National Bank Act arguing that unauthorized charges were usurious, and RICO, alleging that the lender participated in a racketeering activity, usually mail fraud, through misrepresentation. Under state statutes, plaintiffs alleged violations of state insurance laws, motor vehicle financing laws, consumer protection laws, unfair business practices laws and finance laws. Plaintiffs also frequently alleged common law claims based on breach of contract, breach of the implied duty of good faith and fair dealing, breach of fiduciary duty, and negligence. The specific practices or lender acts that have been attacked include the following examples:

1. Commissions or rebates. There was a time when lenders would routinely seek commissions, rebates, or other cost recoveries relating to CPI placement and loss experience. Typically, the lender would create a licensed insurance agency that would receive a commission amounting to a percentage of the total premium placed. Standing alone, commissions are unremarkable so long as the recipient is properly licensed. However, plaintiffs' lawyers have successfully argued that the lender-controlled insurance agency is really just a device to funnel additional funds to the lender.

In defense of the practice, lenders have argued that a commission is necessary to defray the expense and risk of CPI. The lender is incurring expenses in administering the program and bears the risk of collecting the policy premium from the borrower. In addition, lenders have successfully defended these charges by pointing to the fact that the lender's CPI program is approved by a state insurance department, and thus the rates have already been approved by the agency with primary jurisdiction in the area. For example, in *Brannon v. Boatmen's National Bank of Oklahoma*, 976 P.2d 1077 (Okla. App. 1998), the court held that the commission a lender received from the purchase of CPI was properly charged to the borrower as part of the cost of insurance. In addition, in *Kenty v. Bank One*, 92 F.3d 384 (6th Cir. 1996), the Sixth Circuit held that the lender was entitled to add the insurance premiums to the borrower's loan balance, regardless of how much the insurance actually cost the lender. The court held that the borrower was required to pay "premiums and finance charges" to the lender if she did not maintain her own insurance. The agreement's language was not limited to the amount of money it "cost" the lender to buy the insurance in question. (See below for a detailed summary of *Kenty*.) While these lenders successfully defended the practice, the financial benefit of receiving commissions or rebates should be carefully weighed in light of the cost to defend a CPI lawsuit.

2. Interest charges. Loan disclosure documents routinely inform the borrower of the cost of the credit being obtained. When CPI is placed, the cost of the insurance is added to the loan balance, and that new loan balance typically bears interest. If the lender intends to charge interest on the additional funds, it must ensure that the disclosures make clear that the costs of CPI will increase the cost of credit.

3. Amount of coverage. Some states have laws limiting the amount of coverage that can be placed either in relation to the replacement cost of the collateral, or the extent of the loan balance. Whether or not a statute exists in a given state, as a practical matter when too much insurance is placed, the premium costs increase but the benefits do not. As a matter of insurance law, an insurer with $20,000 of insurance on a $10,000 car will pay $10,000 if the car is destroyed even though the lender or borrower effectively paid premiums on the higher amount. There is no single solution to this issue for every state. At a minimum, the amount of CPI coverage should not exceed the loan balance. However, there are exceptions to this general rule, and lenders should refer to the laws of the state in which CPI is placed for guidance on this issue.

4. Scope of coverage. Since the typical car loan agreement usually only requires insurance coverage on the collateral for damage or loss, plaintiffs have argued that lender coverages not separately charged to the lender and going beyond such damage or loss coverage are unauthorized. The borrower is often required by law to have liability insurance, which does not protect the lender. In contrast, CPI typically insures physical damage only, without providing liability coverage or other state mandated coverages. Sometimes lenders have obtained, at the borrower's expense, insurance for conversion, skip, confiscation, premium deficiency, repossession and mechanic's liens, which borrowers argue afford them no protection. Plaintiff's argument in this regard was successful in *Logsdon v. Fifth Third Bank of Toledo*, 654 N.E.2d 115 (Ohio App. 1994), where the plaintiff alleged that the lender breached the contract by purchasing insurance that went beyond collision and comprehensive coverages. The court looked to the language of the loan agreement and found that the language was ambiguous as to what type of insurance the lender could purchase. Because ambiguities are construed against the drafter of the agreement, the court held that the language of the loan agreement limited the lender to obtaining collision and comprehensive coverage. The lender should make sure that the initial loan disclosures exactly match insurance that is later placed by the lender, and that the insurance is designed to protect both the lender and the borrower in the event the vehicle is damaged or stolen. The disclosure should make clear that CPI does not cover liability. Where these lender coverages are desired, the safer way to proceed is to have the coverages separately billed to the lender.

5. Cost of CPI. CPI is usually more expensive than regular borrower-purchased coverage. As explained above, there are common sense underwriting factors driving CPI pricing. First, a CPI insurer obligates itself to insure all of the collateral within the lender's entire portfolio without regard to individual bad risks. Second, borrowers who default on their loan obligations (requiring CPI) are typically expensive risks to insure. For that reason, CPI for a single car is generally more expensive than the insurance that a non-defaulting driver would typically obtain. Plaintiffs' lawyers tended to ignore that many drivers with CPI were such bad risks that alternative insurance could actually cost more than CPI. Drivers subject to "assigned risk" liability programs are often otherwise effectively uninsurable for property damage. The lender should make sure that the insurer is using rates approved by the applicable regulatory agency - typically the state department of insurance - and make sure it discloses that CPI is more expensive (often triple) than what a "good driver" might pay.

6. "Tracking" costs. A substantial service provided by the CPI insurer is tracking loans to ensure that borrowers have proper insurance in place. Plaintiffs have complained that lenders breach their contracts when they charge for the cost of tracking whether insurance is maintained. Plaintiffs argued that tracking fees are not for "insurance" and thus not part of the "cost of insurance" that the lender is authorized under the contract to charge to the borrower. Some courts have held that this is an issue of fact for a jury to decide. Courts have been divided on the issue of tracking costs.

In *Verity v. Bank One of Arizona*, M.C.S.C. CV-1997-013019, the lender did not charge a separate "tracking" fee beyond the charge for the CPI, and thus the court held that the lender did not breach the contract. The court noted that the premiums charged by any insurance company necessarily cover the costs of doing business. In *Porch v. General Motors Acceptance Corporation*, 642 N.W.2d 473 (Minn. App. 2002), the court found that the insurance company's tracking premium was not excessive and was authorized by the contract. Therefore, the cost was properly passed on to the borrower. On the contrary, in *Gibson v. World Savings & Loan Association*, 103 Cal. App. 4th 1291 (2002)(a property case, not an auto case), the court found that plaintiffs' unfair competition law action was not preempted by federal law, where the tracking costs passed onto the borrowers were based on the costs associated with the lenders entire loan portfolio. The court noted that the tracking costs were more expensive because they included the costs for a host of other services which benefited only the lender, a fact which the lender failed to disclose. The court found that the state could rightly regulate the contractual terms between the parties, including the tracking costs, without impinging upon any federally regulated area.

CPI rates as approved by various Departments of Insurance routinely allow tracking as a part of a premium. While not a guarantee against a claim being made, rate approval is a strong defense for the lender. In addition, a contract which explicitly authorizes and clearly describes such costs would also serve to protect the lender.

7. Other plaintiffs' arguments. Plaintiffs' counsel usually took a "shotgun" approach to CPI litigation, making many arguments that did not carry the force of the primary disclosure-related arguments. For example, some plaintiffs have argued that the lenders and CPI insurers "wrongfully" backdate coverage. CPI insurance is often backdated to the expiration of the prior borrower-placed insurance. However, plaintiffs' backdating argument was rejected in *Brannon v.*

Boatmen's National Bank of Oklahoma, 976 P.2d 1077 (Okla. App. 1998), where the court held that the lender was entitled to coverage for any loss or damage to the collateral during any period that the borrower did not have coverage in effect, including any pre-insurance period. The benefit of receiving coverage for unknown losses that occur before a lapse in coverage is determined should be weighed against the possibility that this practice might form the basis of a CPI claim. If this type of coverage is desired, an appropriate disclosure will help minimize the risk of a claim.

Plaintiffs also sometimes claimed that the lender breached the loan contract by not allowing the borrower to select the agent through whom the lender purchased the CPI. Plaintiffs claimed that even though they failed to maintain the insurance, the contract gave them the right to use an agent of their own choosing. In *Odom v. Trustmark National Bank*, 1995 U.S. Dist. LEXIS 22260 (S.D. Miss. 1995), the court accepted this argument. The court found that Trustmark's right to obtain CPI did not necessarily authorize Trustmark to obtain insurance from an agent of its choosing. The court found the agreement ambiguous and therefore construed it against Trustmark, finding that the borrower still had the right to direct Trustmark to an agent of the borrower's choosing. This argument is difficult, however, because the likely result is that the lender will not be able to exercise its right to purchase CPI and will be forced to repossess the automobile. However, the lender can avoid this potential problem by disclosing its right to choose the agent in the event CPI coverage is necessary.

As with many aspects of doing business, there are always trade-offs. At one extreme, CPI claims could be avoided by simply self-insuring. However, while self-insurance guarantees a costly result at the lender's expense, CPI serves to minimize the lender's losses in the event of borrower default. A logical middle ground would be to establish and maintain a CPI program in a manner that minimizes the risks of CPI lawsuits, and in the event a CPI claim is filed, minimizes the risk of exposure.

ADDITIONAL CASE EXAMPLES

As indicated above, most CPI lawsuits settled. Some did proceed through trial and appeal, frequently a several year process. The following are descriptions of cases that have been reported.

In *Acree v. General Motors Acceptance Corporation*, 92 Cal. App. 4th 385 (2001) plaintiffs brought a class action against GMAC for alleged breach of contract and unfair business practices based on GMAC's method of calculating refunds on cancelled CPI. A jury found that GMAC breached the implied covenant of good faith and fair dealing by using the accelerated method to compute premium refunds upon CPI cancellation. The class was awarded damages, attorneys' fees and costs. Under the sales agreement, GMAC could force place insurance if the borrower failed to maintain automobile insurance. The sales agreement provided that the borrower would be charged for the insurance. However, the sales agreement was vague and left the specific terms of the CPI policy to GMAC's discretion, including the method under which any refund would be calculated. Given the silence in the parties' agreement, the court found that a borrower could have legitimately expected that a pro rata method rather than an accelerated refund method would have been applied. Considering the evidence in the case, the appellate court found no error in the underlying decision.

In *General Motors Acceptance Corporation v. Baymon*, 732 So. 2d 262 (Miss. 1999), the Mississippi Supreme Court found in favor of GMAC on plaintiff's claims that GMAC breached a fiduciary duty to its borrowers and that GMAC breached the implied covenant of good faith and fair dealing in connection with GMAC's placement of CPI. The court found that GMAC's power to foreclose on a security interest did not create a fiduciary relationship between GMAC and the plaintiff and therefore, there was no breach of fiduciary duty. In addition, the court found that the covenant of good faith and fair dealing does not prevent the parties to a contract from protecting themselves or from asserting their rights. Because GMAC took only those actions authorized by the contract and the act of placing CPI instead of repossessing the vehicle actually benefited the borrower by allowing her the continued use of the vehicle, GMAC did not breach the implied covenant of good faith and fair dealing.

In *Kenty v. Bank One*, 92 F.3d 384 (6th Cir. 1996), plaintiffs brought a class action against Bank One, with which they had financed their car purchases, and Transamerica, the insurance company from which Bank One had purchased CPI, for alleged violations of RICO, the National Bank Act, and the anti-tying provisions of the National Bank Holding Company Act. The district court granted the defendants' motions for summary judgment and the plaintiffs appealed. The Sixth Circuit affirmed the decision in favor of the defendants. Specifically, the court held that (1) the allegations in plaintiffs' complaint did not allege the predicate act of mail fraud with sufficient particularity to state a civil claim under RICO; (2) Transamerica, which issued the insurance policies at the request of Bank One, was exempt pursuant to the McCarran-Ferguson Act on civil claims asserted by borrowers under RICO; and, (3) Bank One's requirement that borrowers purchase casualty insurance on automobiles securing car loans, as prerequisite to its granting loans, did not violate anti-tying provisions of the National Bank Holding Company Act.

Plaintiffs had alleged that Bank One purchased insurance coverage beyond coverage for theft and damage that would affect the value of the collateral. Plaintiffs argued that this was not disclosed and not authorized by the contracts. In addition, Bank One received rebates from Transamerica and these rebates were not credited to the borrower. The Court held that the statements in the insurance notices were not sufficiently misleading to form the basis of a fraud claim and that any commission received by Bank One could properly be included as part of the premiums and finance charges the plaintiffs were contractually obligated to pay. The court specifically held that the borrower was required to pay "premiums and finance charges" to the bank if the borrower did not maintain insurance. The court held that the contract language was not limited to the amount of money it cost the bank to buy the insurance in question.

In *Bermudez v. First of America Bank Champion*, 860 F. Supp. 580 (N.D. Ill. 1994), the court denied the defendant's motion to dismiss a RICO action where the plaintiff alleged that the lender engaged in mail fraud by charging the plaintiff for CPI coverage that went beyond coverage for damage or loss to the vehicle. The court held that the contract authorizing the purchase of insurance was ambiguous as to whether the lender could purchase coverage in excess of damage or loss coverage, therefore, the plaintiff sufficiently alleged a RICO claim. The opinion was subsequently withdrawn by the court.

A common defense to RICO claims is that the claims are preempted by application of the McCarran-Ferguson Act. This Act is designed to "assure that the activities of insurance companies in dealing with their policyholders would remain subject to state regulation." The Act further provides that "no Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance." The United States Supreme Court addressed a circuit split on this issue in *Humana, Inc. v. Forsyth*, 525 U.S. 299 (1999). The Court found that RICO was not a law related to the business of insurance. It then held that where federal law does not impair the state's administrative regime, the McCarran-Ferguson Act does not bar the federal cause of action. Specifically, the Court found that the RICO claim advanced the state's interest in combating insurance fraud, would not impair any law, and therefore, was not precluded by the McCarran-Ferguson Act. This case limits the preclusion defense to those states whose regimes would be impaired by allowing a RICO claim, such as states that do not otherwise provide a private right of action for victims of insurance fraud. *See e.g., In re Managed Care Litigation*, 185 F. Supp. 2d 1310 (D. Fla. 2002).

In *Wells v. First American Bank West*, 598 N.W.2d 834 (N.D. 1999), a borrower argued that the lender purchased more insurance coverage than it was contractually entitled to purchase. The defendants moved to dismiss on the grounds that the statute of limitations had run. The district court granted the motion but, on appeal, the court held that the borrower's claims must be analyzed in light of the discovery rule which provides that the statute of limitations does not begin to run until the borrower knew, or should have known, about the additional coverage. The borrower claimed he did not know about the additional "unauthorized" coverage until he watched a television show warning consumers that extra insurance is often added when insurance is lender placed. The borrower argued that he was never told of the additional insurance in the letters from his lender. Therefore, the appellate court remanded the case for further proceedings to determine when the borrower knew or should have known of the extra coverage. The case settled on a nuisance value basis.

A LEGISLATIVE SOLUTION

In 1996, the National Association of Insurance Commissioners adopted the Creditor-Placed Insurance Model Act. Since then, a number of states have enacted laws or regulations implementing some or all of the Model Act. The Model Act addresses such CPI issues as policy term and premiums, prohibited coverages, disclosures and notices, and commissions. While a complete summary of the Model Act is beyond the scope of this article, a few key points merit special attention. Section 5 of the Model Act provides in part that the coverage may not exceed the amount of the net debt. Section 6 prohibits several types of coverages, including repossession, skip, and conversion, and deductibles of less than $250. Section 14 contains several disclosure and notice requirements.

Many states such as Arkansas, California, Illinois, Michigan, Mississippi, Missouri, Tennessee, Texas, New Jersey, New York, Oregon, Washington and West Virginia have either adopted the Model Act or enacted similar legislation or regulations. Similar legislation has been introduced in Hawaii and Pennsylvania. Lenders in these states should exercise special care to ensure that their CPI programs comply with the relevant statutory scheme. While compliance with statutory requirements does not prevent litigation in all cases, evidence of compliance should be a significant benefit to the lender. Of course, non-compliance raises the potential for increased liability. Lenders with CPI programs outside of these states should look to the Model Act for guidance, as many states have unfair business practices laws which plaintiffs have repeatedly invoked for CPI litigation

SOME CONCLUSIONS: HOW LENDERS CAN HELP AVOID CLAIMS

There are several things every lender should do before placing insurance to protect collateral.

DISCLOSURE

The lender should make *full, complete, clear and conspicuous disclosures* up-front of at least the following:

(1) the lender's option to purchase CPI in the event the borrower fails to maintain coverage;

(2) the scope of coverage provided by CPI (exactly who and what CPI protects and who and what it does not protect);

(3) the fact that the borrower has the right to choose the insurer, subject to the lender's approval, but that in the event CPI is necessary, the borrower will be subject to the lender's choice of insurers, until such time as the borrower secures acceptable replacement coverage;

(4) exactly what conduct by the borrower will result in CPI placement;

(5) the lender's rights under the CPI program;

(6) the lender's intention to charge interest on the cost of CPI that is added to the loan balance, and how that interest will increase the loan balance;

(7) whether the lender or an affiliate will receive commission;

(8) all administrative fees that the lender intends to charge to the borrower for the placement of the insurance;

(9) the premium rate the borrower can expect to pay for the coverage; and

(10) that CPI will be placed and charged for effective on the date the prior coverage lapses or is deemed unacceptable within the requirements of the loan documents.

While no one can ever guarantee that a lawsuit will never be filed, full and up-front disclosures will lessen the likelihood of litigation and narrow the issues and damages should litigation arise.

APPROVAL BY APPROPRIATE STATE AGENCY; LICENSING

The insurer's entire CPI program (all applicable policy forms, etc.) should be approved as an insurance product in each state in which it is going to be sold. The insurer should be properly licensed, and if commissions are going to be paid, the recipient must be properly licensed as an insurance agent.

ARBITRATION CLAUSES

Arbitration has long been analyzed in the financial institution arena and is beyond the scope of this article. However, lenders should continue to consider including arbitration clauses in their loan agreements, requiring borrowers to submit their disputes to binding arbitration. CPI litigation, especially class actions, can be very costly and can result in negative publicity. In contrast, arbitration is usually faster and less expensive than litigation, leaving a greater opportunity for preserving customer relations.

In conclusion, there is no way to guarantee that all litigation will be avoided. However, lenders can minimize their risks of litigation. By implementing protective measures, a lender can decrease its exposure and the likelihood that it will be the target of a CPI lawsuit. Installing safeguards now, even if not previously in place, can help lenders minimize future exposure by decreasing the potential class size in a class action.

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