

A Mortgage and Consumer Finance Law Update

08/28/07

To WARN or Not to WARN? That is the Question for Companies in the Troubled Subprime Mortgage Industry

A lawsuit filed last week against subprime lender Aegis Mortgage Corp. alleges that the company laid off hundreds of employees without giving them adequate notice. The class action lawsuit has been brought in U.S. Bankruptcy Court for the District of Delaware by a group of former employees against Aegis Mortgage Corporation, Aegis Wholesale Corporation and Cerebrus Capital Management. The complaint alleges violations of the federal Worker Adjustment and Retraining Notification Act (“WARN Act”), 29 U.S.C. §§ 2101–2109. It alleges that Aegis and Cerebrus (who, the plaintiffs claim, comprise a single employer under the Act) laid off approximately 400 workers just prior to filing for Chapter 11 bankruptcy protection on August 13, 2007. The class representatives assert that they are owed back pay and fringe benefits.

Aegis is a Houston-based mortgage lender that conducted business in 49 states and employed more than 1,300 people. It focused primarily on the subprime and Alt-A mortgage markets and was partially controlled by Cerebrus, a hedge fund. Similar suits have been filed against both HomeBanc Corp. and American Home Mortgage Investment Corp.

The WARN Act, which took effect in 1989, was intended by Congress to provide workers, their families, and their communities with notice of plant closings and major layoffs, in order to facilitate finding alternate work and training and to allow local governments to immediately provide assistance. The Act covers employers of more than 100 employees (excluding part-time employees) or of 100 or more employees, including part-time, who work greater than an aggregate of 4,000 hours per week exclusive of overtime. The Act covers both hourly and salaried workers and includes supervisory and managerial workers. In the event of a plant closing or mass layoff that meets the statutory definitions, the Act requires covered employers to give at least 60 days’ notice to workers or their representatives, to the state dislocated worker unit, and to the appropriate local government unit. A plant closing is defined as a shutdown of a facility or operating unit that results in an employment loss for 50 or more employees; a mass layoff is defined as one in which the employer lays off either more than 500 employees or between 50 and 499 employees who comprise greater than 33 percent of the workforce.

The Act allows civil plaintiffs to seek back pay and benefits (including medical expenses that would have been covered by health insurance) for the period of the violation, up to 60 days, and includes provision for civil penalties of up to \$500 per day. In addition, it allows successful plaintiffs to seek attorneys’ fees. The WARN Act also contains three exceptions to the notice

requirements, including one for events not reasonably foreseeable that were “caused by some sudden, dramatic, and unexpected action or condition outside of the employer’s control.” Some states, including California and Illinois, have enacted legislation that is similar to the WARN Act but may differ from the parallel federal provisions.

What This Means for Mortgage Lenders

Mortgage lenders who face the possibility of large-scale layoffs or facility closures should carefully consider whether their actions will be covered by the WARN Act. Even if they may not be subject to the WARN Act, a business will often weigh the potential cost of litigating such claims against the burdens of providing the requisite notice. The WARN Act and its implementing regulations are complicated, and professional legal advice should be sought in advance of layoffs or closures that may implicate either the WARN Act or state law equivalents.

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