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11th Circ. Told To Nix BofA \$228M Force-Placed Insurance Deal

By **Emily Field**

Law360, New York (May 13, 2015, 7:42 PM ET) -- Two members of a settled class action accusing Bank of America NA of accusing the bank of overcharging homeowners for force-placed insurance told the Eleventh Circuit on Tuesday that the \$228 million deal shouldn't have been approved because the settlement amount is illusory.

Appellants Michael and Jill Trapasso told the Eleventh Circuit that a Florida federal judge shouldn't have signed off on the settlement last year and the class counsel's \$16 million fees because there's no common fund and no minimum payout. The Trapassos say that the \$228 million valuation is "fiction," only a small percentage of class members had filed claims before the deal was approved and there's no evidence how many of those are valid claims.

"No one thinks that \$228 million will be distributed to the class. That number is inflated and illusory," the Trapassos said. "Further, since the settling parties refuse to disclose claims data until after a final judgment is entered the actual value of the settlement is not just difficult to ascertain, it is impossible."

According to the Trapassos, the lower court made an error in law by applying legal principles regarding fees awarded from common funds to a claims made settlement without a common fund or guaranteed payout.

Additionally, a significant number of the approximately one million class members aren't eligible for compensation under the settlement, the Trapassos said. Only 4.2 percent of the class members had filed claims at the time of last year's fairness hearing, according to their brief.

To file a valid claim, a class member can't have filed for bankruptcy since the forced-placed insurance policy was issued and their mortgage can't have been discharged or compromised in bankruptcy, according to the Trapassos.

"While some borrowers may have failed to procure or keep this insurance due to sloth or oversight, one of the significant reasons why the borrowers did not procure or keep the insurance is that the borrower was in financial distress and simply could not afford the insurance," the Trapassos said.

The Trapassos also said that the \$16 million attorney's fee award will likely exceed the actual class recovery.

The plaintiff homeowners in the settlement had insurance coverage "force placed" on their properties by BofA and BAC Home Loans Servicing under a lender-placed insurance practice.

The issue arises from the practice of mortgage banks requiring borrowers to secure hazard

insurance to protect their properties. The plaintiffs said that when borrowers' coverage lapsed, BofA would obtain coverage from QBE/Balboa, according to court documents.

The plaintiffs didn't not challenge the requirement to have insurance but argued that the arrangement BofA had with QBE/Balboa artificially inflated the cost of premiums beyond what was reasonable or necessary to protect the property, according to court documents.

The BofA settlement is one in a string of settlements over the practice of overcharging homeowners for force-placed policies. In March 2014, Wells Fargo and Assurant Inc. settled for an undisclosed amount in a similar case.

"We are proud that hundreds of thousands of class members from across the country were all very happy with this lender placed settlement that was carefully analyzed and approved by the district court," Adam Moskowitz of Kozyak Tropin & Throckmorton PA, attorney for the plaintiffs, told Law360 on Wednesday. "The statements made by this sole attorney/objector to hold up the significant relief to the class are incorrect, were rejected by the district court and this counsel was required to dismiss his last appeal because his allegations were incorrect."

Representatives for Bank of America didn't immediately respond to requests for comment on Wednesday.

The Trapassos are represented by Gregory Woods of Woods Weidenmiller & Michetti PL.

The plaintiffs are represented by attorneys from Kozyak Tropin & Throckmorton PA, Podhurst Orseck PA and Harke Clasby & Bushman LLP.

The Bank of America defendants are represented by attorneys from Goodwin Procter LLP

The case is Trapasso v. Bank of America, N.A., case number 14-15712 in the U.S. Court of Appeals for the Eleventh Circuit.

— Additional reporting by Zachary Zaggar. Editing by Ben Guilfooy.

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