



State of North Carolina

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ATTORNEY GENERAL

April 11, 2006

North Carolina Senate President *Pro Tempore* Marc Basnight
North Carolina House of Representatives Speaker James Black
Chairs, Joint Legislative Commission on Governmental Operations

Senator Eleanor Kinnaird
Senator John Snow
Representative Joe L. Kiser
Representative R. Phillip Haire
Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: N.C.G.S. § 114-2.5; Report of Court Orders in Favor of the State
1) *State of North Carolina v. Ameriquest Mortgage Company, Town & Country Credit Corporation, AMC Mortgage Services, Inc. f/k/a Bedford Home Loans, and ACC Capital Holdings Corporation*, Wake County Superior No. 06 CVS 004114; 2) *Sonic, Inc. and Sonic-North Carolina*; 3) *DIRECTV, Inc.*; 4) *State of North Carolina v. Donald W. Gupton, Inc. d/b/a Dynasty Homes of Henderson, et al.*, Wake County Superior No. 03 CVS 417; 5) *In Re: Cardizem CD Antitrust Litigation*; U.S. District Court For The Eastern District of Michigan, Southern Division; Master File No. 99 MDL 1278 (NGE); and 6) *State of North Carolina v. Publishers Clearing House*, Wake County Superior No. 00 CVS 804

Members:

N.C.G.S. § 114-2.5 requires that not less than thirty (30) days prior to disbursement of funds received by the State or State agency pursuant to a settlement agreement or final orders of judgment of the case where the amount of funds exceed \$75,000, the Attorney General shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety on the payments received by the State. Pursuant to that statute, I am writing to report as follows:

- ◆ On January 23, 2006, North Carolina, by and through its Department of Justice and Office of the Commissioner of Banks, and 49 other states, commonwealths and the District of Columbia entered into a \$325 million settlement with mortgage holding company ACC Capital Holding Corporation, and its three retail subsidiaries Ameriquest Mortgage Company, the nation's largest subprime lender, Town & Country Credit Corporation, and AMC Mortgages Services, Inc. f/k/a Bedford Home Loans to resolve charges brought by a multi-state task force that investigated allegations that the companies overcharged and defrauded consumers, as well as engaged in practices amounting to predatory lending. Specifically, consumers' complaints included: unfair disclosures of prepayment penalties, discount points and other loan terms, unsolicited refinancing offers that hid prepayment penalties, influenced and inflated appraisals, and being encouraged to lie about income or employment to obtain loans. On March 23, 2006, the Honorable Donald W. Stephens, Superior Court Judge for Wake County entered an order granting approval of North Carolina's portion of the settlement. Under the settlement, \$295 million is allocated to compensate borrowers, and \$30 million is to be distributed to the settling states for attorney's fees, investigation costs, and to fund consumer fraud education, investigation, enforcement operations, litigation, public protection, or local consumer aid, including contributions to develop a national mortgage licensing systems; the North Carolina Department of Justice's share is \$75,000. Of the \$295 million for consumer refunds, \$175 million will be distributed via a nationwide claims process to eligible consumers who obtained loans from an Ameriquest party between January 1, 1999, and April 1, 2003. The remaining \$120 million will go to the states based on the percentage of total Ameriquest party loans held by consumers in each state. Those funds will be used to pay refunds to consumers who obtained loans from an Ameriquest party between January 1, 1999, and December 31, 2005. Of the \$120 million, North Carolina's share for consumers is \$789,600 plus any net, post-tax interest earned. Distribution of the \$295 million will be handled by an independent settlement administrator. It is estimated that approximately 6,000 North Carolinians will receive refunds totaling approximately \$1.5 million.
- ◆ On March 13, 2006, North Carolina entered into a settlement agreement with Sonic Automotive, Inc. and Town and Country Ford, Inc. d/b/a Town and Country Ford, Arngar, Inc. d/b/a , Arnold Palmer Cadillac, Sonic Automotive-9103 E. Independence, NC, L.L.C. d/b/a Infiniti of Charlotte, Frontier Oldsmobile-Cadillac, Inc. d/b/a Freedom Chevrolet-Oldsmobile-Cadillac, and Marcus David Corporation d/b/a Town and Country Toyota-Scion/Town and Country Used Cars (collectively, Sonic-North Carolina) to resolve a consumer protection investigation that began in December 2003 into the sales and financing practices of Sonic-North Carolina. The investigation revealed, among other things, that the dealerships failed to adequately disclose and unfairly and deceptively marketed various "back-end" vehicle add-on products, including but not limited to, the EasyCare ETCH vehicle protection anti-theft warranty. North Carolina received \$975,000 which will be used to provide refunds to eligible consumers who purchased the ETCH anti-theft warranty option from January 1, 2001, through December 31, 2003, as well as for consumer protection, education, and enforcement purposes and to reimburse the General Fund \$25,000 for attorneys fees.

- ◆ On December 12, 2005, North Carolina and 21 other states and commonwealths entered into a settlement with satellite television service and equipment provider DIRECTV, Inc. to resolve allegations that the company's advertisements confused and misled consumers. Specifically, the company's ads contained small unreadable print that changed the offer made in the ad's larger print. The settlement requires the company to reform its advertising so that it clearly informs consumers about the total cost of the company's service and equipment, and to provide refunds to consumers who have been charged disputed fees by the company since January 1, 2001. Since 2001, 89 North Carolina consumers complained to the Attorney General's office about DIRECTV, and many of those consumers have received or will receive refunds. Under the settlement, the company paid \$5 million to the states. North Carolina received \$269,000 representing its share of the funds to be used for consumer protection, education, and enforcement purposes. In addition, North Carolina received \$21,000 as reimbursement of its attorneys fees and investigative costs which was returned to the General Fund.
- ◆ On January 13, 2003, the State of North Carolina initiated a civil action against Vance County mobile home dealer Donald W. Gupton individually and operating as Dynasty Homes of Henderson, Creative Real Estate and Superior Housing Center alleging they had engaged in unfair and deceptive business practices in the solicitation and sale of manufactured homes and land to North Carolina consumers. Represented by private counsel, approximately 65 consumers victimized by Gupton's illegal business practices reached a private settlement with Gupton whereby he agreed to pay them substantially more than \$75,000 in restitution. On November 4, 2004, the State, Gupton and his companies entered into a court-approved settlement to resolve the allegations in the civil action. Under the settlement, North Carolina received \$75,000 to be used for consumer protection, education, and enforcement purposes, which shall include non-profit foreclosure assistance services in the affected communities. The State's settlement with Gupton was contingent upon the consumers receiving restitution from Gupton and his companies.
- ◆ On January 24, 2003, North Carolina and 28 other states, commonwealths, districts, and territories, entered into a \$80 million court-approved national settlement with Aventis Pharmaceuticals, Inc. and Andrx Corporation, two major pharmaceutical manufacturers, to resolve allegations that the companies colluded to keep generic versions of Cardizem® CD, a prescription heart medication, off the market. The case charged that beginning in July 1998, Hoechst, a pharmaceutical company acquired by Aventis in 2000, paid Andrx not to market a generic version of Cardizem® CD. The delay in the availability of the generic form of Cardizem® CD meant that consumers, medical insurance companies, and the government had to purchase the higher priced brand version of the drug for at least an extra year.

By orders respectively dated October 10, 2003 and May 31, 2005, the U.S. District Court for the Eastern District of Michigan, Southern Division, granted final approval of the settlement and the distribution of the settlement funds to consumers. Pursuant to the

settlement, of the \$80 million available for distribution, \$25 million is to be used to reimburse eligible consumers who paid all or part of the purchase price for Cardizem® CD or its generic versions at any time from January 1, 1998 through January 29, 2003; \$30 million is to be used to pay claims of consumers and Third Party Payors who purchased and/or paid for Cardizem® CD or its generic versions at any time from January 1, 1998 through January 29, 2003; \$7 million is to be used to pay claims of state agencies and reimburse the settling states' for attorneys fees and enforcement costs; \$16 million is to be used to reimburse Private Plaintiffs' Counsel for their legal fees and expenses; and \$2 million is to be used for publication and notice costs associated with informing consumers and Third Party Payors of the settlement. Nationwide, the distribution will compensate more than 76,000 individual consumers. North Carolina received \$269,547.48 representing its share of funds to be used for distribution to affected state government agencies which includes the NC Medicaid program, the State Health Plan, DHHS/DMH/DD/SAS, the Department of Corrections, and East Carolina University, and for consumer protection, education, and enforcement purposes. North Carolina also received \$22,000.00 as reimbursement of its attorney's fees and investigative costs which was returned to the General Fund.

In addition, pursuant to the consumer portion of the settlement, commencing in July 2005, reimbursement payments totaling \$738,120.96 were disbursed to 2,144 North Carolina claimants. The consumer portion of the settlement was administered by a third-party settlement administrator via a claims process. Pursuant to the settlement, if any funds remain in the Consumer Settlement Fund after distribution to consumers, net of Court-approved costs of administration and costs associated with the lawsuit, including reasonable attorneys fees, the remaining funds shall be distributed in a manner and on terms and conditions determined by the Court. Such distribution may include a *cy pres* distribution to be administered by plaintiff states to benefit the health care needs of users of Cardizem® CD or its generic equivalents.

- ◆ On August 16, 2001, North Carolina and 25 other states, territories and commonwealths entered into a \$34 million court-approved settlement with sweepstakes company Publishers Clearing House (PCH) to resolve several state lawsuits that alleged consumers often were misled by PCH mailings into believing they had won contests or that making purchases would enhance their chances of winning. Pursuant to the consumer portion of the settlement, via a claims process managed by a third-party claims administrator, PCH paid refunds totaling \$19 million in 2002 and 2003 to consumers nationwide who were deceived by PCH's practices – North Carolina consumers received approximately \$804,361.12 in refunds. In 2003, PCH also paid civil penalties totaling \$1 million to the settling states – North Carolina received \$38,461.50 as its allocation and those monies were transferred to the Civil Penalty and Forfeiture Fund. Of the remaining \$14 million paid by PCH, \$1 million was used to cover the costs to administer the national consumer restitution program, and \$13 million was and is to be paid to and applied by the settling states to their consumer protection efforts including for placement in or application to, a consumer education, litigation, or local consumer aid fund, as well as for reimbursement of litigation costs and attorneys fees. North Carolina's share is \$161,872.50, which

includes \$111,073.17 which was distributed to the states in March 2006. In 2002 and 2003, North Carolina received a total of \$54,000 as reimbursement of its attorneys fees which was returned to the General Fund.

We will be happy to respond to any questions you may have regarding this report. Please feel free to contact me at (919) 716-6400.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristi Hyman", followed by a long horizontal flourish.

Kristi Hyman
Chief of Staff

KH/dlm

cc: Nels Roseland, Chief Fiscal Officer, NC DOJ
Denise Thomas, Fiscal Research, NCGA