

**PREDATORY LENDING ON TRIAL SEMINAR**

**SYLLABUS**

**FALL 2010**

**INSTRUCTOR:**        **Stuart Rossman**  
                             **Director of Litigation**  
                             **National Consumer Law Center**  
                             **7 Winthrop Square, 4th Floor**  
                             **Boston, MA 02110**

**OFFICE NO.:**        **(617) 542-8010**  
**FAX NO.:**         **(617) 542-8028**  
**HOME NO.:**       **(781) 449-2548**  
**E-MAIL:**          **[srossman@nclc.org](mailto:srossman@nclc.org)**

### **CLASS 1    August 31, 2010    Defining Predatory Lending**

An introduction to the semester and the course requirements. We will explore the differences, if any, between Predatory Lending and Sub-Prime Lending in an effort to define the former. In furtherance of this exercise, the students will then engage in a discussion of the tension that exists when consumers respond to complex choices regarding the selection of credit card options.

### **CLASS 2    September 7, 2010    The Mortgage Foreclosure Crisis**

A discussion of the residential mortgage market and the rise of the subprime and predatory lending industries. Topics will include an exploration of the factors giving rise to the subprime market and an analysis of the key institutional players. Particular emphasis will be placed on policy debates surrounding access to credit and regulation.

### **CLASS 3    September 14, 2010    Mortgage Remedies and Foreclosure Prevention**

An analysis of workable liability doctrines and effective defense strategies, including statutory tools, that might be used to combat predatory mortgage abuses exploited or enabled by brokers/originators, investment banks, rating agencies, and investors or to prevent mortgage foreclosures caused by predatory mortgage products. Special attention will be paid to discussing the case of *U.S. Bank National Asso. v. Ibanez* that will be argued before the Massachusetts Supreme Judicial Court next term (an appeal in which the Court will decide who has standing to foreclose a mortgage in the Commonwealth).

### **CLASS 4    September 21, 2010    The Fringe Lending Crisis**

We will explore the non-mortgage fringe lending market and examine industry practices. Students will then watch the movie, *Maxed Out*: a moving expose of the credit card industry and the effect of rising debts on middle-class America and discuss its implications on consumer advocacy strategies.

### **CLASS 5    September 28, 2010    Combating Unfair and Deceptive Practices**

How have traditional consumer protection laws adapted to confront the ever-changing abuses of the fringe lending market and the products it fosters? We will discuss common law claims (e.g. breach of contract, conspiracy, unconscionability, fraud and misrepresentation), state consumer protection statutes and federal statutory rights.

### **CLASS 6    October 5, 2010    Mandatory Arbitration and Access to the Courts**

We will discuss the impact of mandatory pre-dispute arbitration clauses included in adhesion contracts with a special emphasis on the tension between the Federal Arbitration Act and consumer claims. Special attention will be paid to discussing the case of *AT&T v. Concepcion* that will be argued before the Supreme Court next term (an appeal in

which the Supreme Court will decide whether the Federal Arbitration Act preempts state law rulings that class action bans are unconscionable).

**CLASS 7    October 12, 2010    Pre-emption/Standing/Private Rights of Action**

We will examine the interplay between federal and state law as it impacts consumer issues, with special attention being paid to the growth and effect of federal preemption of state regulation. We also will look other barriers to access to the judicial system created by the shrinking concepts of standing and private rights of action

**CLASS 8    October 19, 2010    Class Actions**

We will discuss the efficacy of class action relief in the consumer law context after passage of the Class Action Fairness Act and the most recent amendment of Federal Rules of Civil Procedure Rule 23, paying particular attention to the tension between class-wide relief and relief for individuals who have claims outside the class.

**CLASS 9    October 26, 2010    Equal Access to Credit**

A discussion about communities abandoned via redlining by institutional lenders and targeted by the emerging economy driven by the subprime industry. We will study the discriminatory effects that the fringe lending industry has had on minority consumers and on economic development in low-to-moderate income communities and the legal strategies that are being developed to combat the phenomenon

**CLASS 10    November 2, 2010    Consumer Litigation Roundtable**

A guest panel of litigation experts, including a legal services attorney, an Assistant Attorney General, a private counsel consumer advocate and a financial services industry lawyer will provide very varying viewpoints concerning the enforcement of consumer rights through the court system. Students will be asked to challenge the panelists and engage them in a discussion

**CLASS 11    November 9, 2010    Regulatory Reform and Legislative Advocacy**

Litigation is not the only response to combating the problems of predatory lending. Legislative and regulatory efforts are on-going at both the federal and state levels to protect consumers from the worst abuses. We will be joined by two guests, a government official engaged in state consumer policy making and a consumer advocate who has been encouraging Congress and the Administration to improve consumer protections in the marketplace for an up to date report on current, on-going efforts in these areas.

**CLASS 12    November 12, 2010    National Consumer Law Center  
Consumer Rights Litigation Conference  
Park Plaza Hotel, Boston, MA**

**TWEN will be used extensively for this class. Readings and other course materials will be posted there, so remember to sign up.**

**All classes to be held on Tuesday evenings from 5:30 pm to 7:30 pm unless otherwise indicated above.**

### **SEMINAR GRADING:**

#### **ATTENDANCE AND CLASS PARTICIPATION**

Class attendance and participation are very important to a successful learning experience. Students are expected to do the assigned reading and to participate in classroom discussions. 25% of student grade will be based upon attendance and classroom participation. Remaining 75% of grade will be for written assignments.

Written assignment: There will be 3 small group written assignments during the course of the class that will be limited to 15 pages per paper. In lieu of a final exam, each student must submit an individual written paper (limited to 10 pages). The final paper will be based on complimentary attendance at the National Consumer Law Center's Consumer Rights Litigation Conference on Friday, November 12, 2010 at the Park Plaza Hotel in Boston, MA. Students must select a session offered on that date and relate the presentations made at the session to a topic we covered during the seminar. The final paper is due by, November 19, 2010, the last day of the finals period.