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Proceedings

A monthly newsletter from McGraw-Hill

March 2012 Volume 3, Issue 8

Mc Graw Hill Education

Contents

Dear Professor,

The spring semester is fast progressing! Welcome to McGraw-Hill's March 2012 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 3, Issue 8 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the March 2012 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A small claims court action against Honda Motor Corporation for alleged misrepresentation of fuel efficiency;

2. United States criminal sanctions imposed against Japanese automobile parts supplier executives for bid-rigging and price-fixing;

3) The Stock Act's prohibition on Congressional insider trading;

4. Videos related to a) Facebook's initial public offering (IPO); and b) a $25 billion settlement between five (5) big banks and the government in response to the mortgage crisis;

5. An "ethical dilemma" related to employer-imposed "term limits" on employees; and

6. "Teaching tips" related to Article 2 ("Two Auto Parts Suppliers Fined $548M for Price Fixing") and Article 3 ("Stock Act: Senate Moves to End Congressional Insider Trading") of the newsletter.

Here's to continued academic success during Spring Semester 2012!

Jeffrey D. Penley, J.D.
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Of Special Interest

This section of the newsletter covers three (3) topics:

1) A small claims court action against Honda Motor Corporation for alleged misrepresentation of fuel efficiency;

2) United States criminal sanctions imposed against Japanese automobile parts supplier executives for bid-rigging and price-fixing; and

3) The Stock Act's prohibition on Congressional insider trading.

Hot Topics in Business Law

Article 1: "Honda Hybrid Lawsuit: Heather Peters Wins $9,867 from Honda in Small Claims Court"

http://www.huffingtonpost.com/2012/02/02/honda-hybrid-lawsuit-heather-peters-wins_n_1248357.html

Note: See the associated video and photographs, also located at the above-referenced website.

According to the article, Heather Peter's computer crashed under the onslaught of messages following her unique victory over Honda in small claims court – a win the California woman is hoping will lead other consumers to reject a class action settlement over defective hybrid cars.

Peters, who was at the center of a whirlwind as she welcomed camera crews to her home, said she has received more than 500 Facebook messages and had 6,000 hits on her website following a court decision awarding her $9,867 and finding Honda misled her into thinking her Hybrid could get 50 miles per gallon. She said the 2006 model, which she still owns, gets about 30 mpg.

Peters' win in small claims court was a unique end run around the class action process and set the stage for others to follow suit. She sees her victory as benefiting not just Honda owners but all consumers.

"To me this is really about the decline in customer service in America and how we have rolled over and accepted it for too long," she said. "People are mad as hell and they're not going to take it."

Class action lawsuits typically give small settlements to all members of the class. In the Honda suit, the company has offered $100 to $200 to each owner of an under -performing hybrid along with a $1,000 coupon to some toward purchase of a new car.

Peters, a former lawyer, said she is renewing her legal license after a 10-year lapse so she can consult with other Honda owners. She said she is also posting all the paperwork from her small claims suit online as a guide for others contemplating such suits.

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There appear to be many of them across the country, with Peters sharing dozens of e-mails sent to her by Honda owners who are opting out of the class action and filing their own suits.

But Professor Laurie Levenson of Loyola University Law School said Honda may have suffered something much worse than a possible flood of small claims actions.

"The worst part for Honda is they've been branded as committing fraud," she said. "That's not good for sales. It's a P.R. disaster and sometimes that costs more than the judgment."

One Honda owner in Texas was among those taking action.

"I have already sent in my letter opting out of the class action," said Darrell Stevens of Houston, Tex. who said in a phone interview that he has already filed his small claims action against Honda.

"The reason I'm doing this is it's just not fair what they're offering." he said. "I'm going to do what Ms. Peters did and present figures in court. I have no value left in the car. As soon as Ms. Peters won, there's no resale value for the car."

He said his hybrid gets 30 to 32 miles per gallon.

Honda said it will appeal Peters' judgment. She said she's confident she will win. She said more witnesses have been volunteering to help her, including a whistle blower from within Honda.

A legal expert sees Peters as in the vanguard of a consumer revolution on line

"What's new about this case is social networking," said Professor Howard Erickson of Fordham University Law School in New York.

"This is an example of how a revolutionary movement gets started," he said. "This is one individual fighting the powers that be and spreading the. Her website Don'tSettleWithHonda.com became a rallying point for dissatisfied Honda hybrid owners.

She has now decided to renew her legal license after a 10-year lapse in order to consult with other Honda owners on their legal actions.

Los Angeles Superior Court Commissioner Douglas Carnahan ruled Wednesday that the automaker misled Peters about the potential fuel economy of her hybrid car and awarded her $9,867, close to the maximum allowed by law.

"At a bare minimum Honda was aware that by the time Peters bought her car there were problems with its living up to its advertised mileage," Carnahan wrote in the judgment. He harshly criticized the company for making false promises it could not deliver.

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Aaron Jacoby, a class action lawyer in Los Angeles, said Peters definitely put a new twist on small claims court. But he felt few people would have her dedication and the time to pursue a similar case.

"I just don't think it's going to take off," he said. "There are a lot of class action cases out there. It would be hard to make a dent."

Richard Cupp, a Pepperdine University professor who had predicted Peters' victory, said others will likely be inspired to follow her example.

"I remember her saying at the beginning that she wanted to start a small claims flash mob," he said. "And I think that's what she did."

A judge in San Diego County is due to rule in March on whether to approve Honda's class-action settlement. Members of the class have until February 11 to accept or decline the deal.

Recently, Honda issued a lengthy statement insisting that the Honda Civic Hybrid has the capability to achieve 50 miles per gallon or more "in real world driving conditions."

The statement by Honda spokesman Chris Martin also attached numerous letters of commendation from satisfied Honda customers.

"American Honda believes that the judgment in this case is a radical and unprecedented departure from California and federal law... we intend to vigorously appeal this decision."

Honda defended the claims made in their advertising, which they say was accurate when the vehicles were sold and remains accurate today.

Discussion Questions

1. What are the advantages and disadvantages of a plaintiff pursuing his or her case in small claims court?

In terms of its advantages, small claims court provides a relatively quick, cost-effective method of dispute resolution, certainly when compared to civil litigation. In terms of its disadvantages, there is a jurisdictional cap on the type of case that can be tried in small claims court (as the article indicates, $10,000 in California). There is no jury trial in small claims court, so if a litigant would prefer a jury trial, the case should be tried in regular civil court.

2. What are the advantages and disadvantages of a plaintiff participating in a class action lawsuit?

In terms of its advantages, a class action lawsuit provides "power in numbers," as plaintiffs can combine their resources (financial, legal representation, and otherwise) to litigate against an often-large corporate defendant that has access to a great amount of resources. In terms of its

disadvantages, winning plaintiffs must share their financial recovery (often, there are thousands of plaintiffs participating in a class action lawsuit), and plaintiffs' attorneys often charge 40-50 percent of the overall recovery as legal fees, perhaps even more when factoring in the associated costs of litigation.

3. In your reasoned opinion, was the California small claims court decision in favor of Heather Peters and against Honda a sound decision? Why or why not?

This is an opinion question, so student responses will likely vary in response to this question.

Article 2: "Two Auto Parts Suppliers Fined $548M for Price Fixing"

http://content.usatoday.com/communities/driveon/post/2012/01/two-auto-parts-suppliers-fined-500m-for-price-fixing/1?loc=interstitialskip

According to the article, two Japanese auto suppliers are paying fines totaling $548 million in a criminal price-fixing conspiracy case involving parts sales to United States automakers.

One supplier, Yazaki will pay a $470 million fine and the other, Denso, will pay $78 million. The Yazaki fine was the second-largest criminal fine obtained for a Sherman Act antitrust violation. In addition, four Yazaki executives, all Japanese citizens, will serve up to two years in United States prison as part of the deal to plead guilty to one felony count.

Court documents filed in federal court in Detroit say the executives overcharged for instrument panel clusters, wiring harnesses and other automotive electrical components. The United States Justice Department says they met to monitor and enforce adherence to the bid-rigging and price-fixing scheme from at least January 2000 through February 2010.

"This criminal activity has a significant impact on the automotive manufacturers in the United States, Canada, Japan and Europe and had been occurring at least a decade," the FBI's Special Agent in Charge Andrew Arena said in a statement. "The conduct had also affected commerce on a global scale in almost every market where automobiles are manufactured and/or sold."

It was not immediately clear how many automakers were affected by the conspiracy, how many models were affected and how much the price-fixing scheme inflated parts prices.

The two-year sentences against the executives would be the longest term of imprisonment ever imposed on a foreign national voluntarily submitting to United States jurisdiction for a Sherman Act antitrust violation, the Justice Department said.

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The executives are:

Tsuneaki Hanamura, a branch manager at Yazaki North America in Columbus, Ohio, and a Honda division sales manager in Japan;

Ryoji Kawai, director of Toyota Sales of Yazaki North America in Lexington, Ky., and vice division head of Yazaki's Toyota Business Unit in Japan;

Shigeru Ogawa, assistant section manager and later section manager in Yazaki's Honda Business Unit in Japan and branch manager in Yazaki's Honda Sales Unit and later director at Yazaki North America in Columbus; and

Hisamitsu Takada, assistant manager in Yazaki's Toyota Business Unit, director of Yazaki North America in Lexington, and manager of a sales department of Yazaki's Toyota Business Unit in Japan.

Hanamura and Kawai have each agreed to serve two years, and Ogawa and Takada have each agreed to serve 15 months. Each of the four has also agreed to pay a $20,000 criminal fine.

The charges are part of an ongoing federal antitrust investigation into bid rigging, price fixing and other anti-competitive conduct in the automotive parts industry. In November, Furukawa Electric pleaded guilty and was sentenced to pay a $200 million fine for its role in the wire harnesses price-fixing and bid-rigging conspiracy. Three Furukawa executives also pleaded guilty and agreed to serve prison terms in the United States.

Discussion Questions

1. What is “price-fixing?” Should price-fixing be considered a crime?

Price-fixing is an illegal agreement between sellers to artificially “fix” a price for a product that is above what the market price would ordinarily be for the product (assuming the free-market interaction of supply and demand were allowed to establish an “equilibrium” price). In terms of whether price-fixing should be considered a crime, this is an opinion question, so student responses will likely vary in response to this question. Those who are truly “free market” advocates will likely agree that price-fixing constitutes a wrong against society (and therefore a crime), since sellers who coordinate a fixed price are not allowing the free market economy to operate.

2. What is “bid-rigging?” Should bid-rigging be considered a crime?

Bid-rigging is an illegal agreement wherein a contract is awarded to a certain supplier, even though the supplier did not provide the most cost-effective bid in a competitive bidding process, or the supplier was automatically awarded the contract without a competitive bidding process. Just like price-fixing, bid-rigging often results in a price for a product that is above what the market price

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would ordinarily be for the product. In terms of whether bid-rigging should be considered a crime, this is an opinion question, so student responses will likely vary in response to this question. Those who are truly "free market" advocates will likely agree that bid-rigging constitutes a wrong against society (and therefore a crime), since sellers who "rig" a bid are not allowing the free market economy to operate, and often pass any price increases along to taxpayers (in the case of government bid-rigging) or consumers (in the case of corporate bid-rigging).

3. Should foreign nationals be subject to United States jurisdiction in terms of the application of United States criminal law? Why or why not?

This is an opinion question, so student responses will likely vary in response to this question.

Article 3: "Stock Act: Senate Moves To End Congressional Insider Trading"

http://www.huffingtonpost.com/2012/01/30/stock-act-senate-moves-to_n_1242787.html

Note: See the associated video located at the above-referenced website.

Note: Since this article published, the United States House of Representatives has voted in favor of its version of the Stock Act. The Senate and House versions do vary in terms of their details, and those variations must be resolved before the bill becomes law.

According to the article, the United States Senate advanced a bill recently that aims to curb potential insider trading by the United States Congress.

The Stop Trading on Congressional Knowledge Act,or Stock Act, easily passed a procedural vote 93 to 2, clearing the way for a debate and amendment process that insiders said they expected would lead to passage by week's end.

The measure would require members of Congress and high-ranking staffers and federal employees to abide by insider trading rules that apply to everyone, and also would require members of Congress and top aides to report significant financial transactions within 30 days.

"The American people need to know that their elected leaders play by the exact same rules that they play by," said Senator Kirsten Gillibrand, a lead sponsor. "They also deserve to know that their lawmakers' only interest is what's best for the country, not their own financial interest."

"This is a measure the American people are clamoring for," said Senator Scott Brown, marking bipartisan support for the bill.

The House had been set to consider a similar bill last month, but Majority Leader Eric Cantor had the measure pulled from the Financial Services Committee that was about to start work on it.

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The Virginia Republican's office said Cantor was concerned because the measure was also being considered by five other committees, risking conflicts. Cantor also thought the bill should apply to the White House, his spokeswoman said.

"Building upon the Senate bill, this common-sense proposal will not only deal with insider trading of stocks, but also prevent all federal officials and employees from using insider information for profit in other areas in a constitutionally sound way," said Cantor spokeswoman Laena Fallon. "As Leader Cantor has said, he strongly supports increased disclosure to prevent any sense of impropriety and ensure the public's confidence and trust in our elected officials."

Cantor plans to move an expanded version of the Stock Act through the House in February, Fallon said.

Some of the Senate's lead sponsors said they were dubious of the effort in the House.

"We're not opposed to working with folks to get the very best piece of legislation," said Senator Debbie Stabenow. "We hope that it's not going to be political gamesmanship in a presidential year."

The senators suggested Cantor would be better off keeping the measure tightly focused, then offering a new measure if he thinks more of the government should be covered.

"If Eric Cantor wants to lead another piece of legislation, God bless him," said Gillibrand.

The process of getting the bill passed in the Senate appeared straightforward, but Senate Majority Leader Harry Reid has promised an open amendment process, and sponsors from both parties appealed for members to keep their offerings tightly focused on the bill's purpose.

Senator Joe Lieberman, chairman of the Committee on Homeland Security and Governmental Affairs, compared it to the Dr. Seuss story, "Thidwick the Big-Hearted Moose."

"I don't know if you remember him, but he was a very good-natured moose," Lieberman said on the Seante floor. "One by one through the pages of the book, as Dr. Seuss records it, other animals in the forest want to lodge in his enormous antlers, and he welcomes them until finally there is too much there, and his antlers fall off and they all fall to the ground.

"We don't want this wonderful bill ... to be so loaded up that it falls by the wayside, like Thidwick's antlers," Lieberman said.

Brown was impressed with the comparison. "You know, you," he said, smiling broadly. "I love hearing your stories. That's why I'm reading your book, all right? Because of your knowledge and your history and the way you can weave things back and forth. That's a very good analogy. I too have concerns."

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Discussion Questions

1. Define "insider trading."

"Insider trading" is defined as a stock sale or purchase that results from access to information that is not available to the general public.

2. Should insider trading constitute a crime? Why or why not?

Although student opinions may vary in response to this question, most will likely agree that insider trading should constitute a crime, based on the assumption that it is inherently unfair to allow a corporate executive, congressperson, or anyone else privy to insider information to take advantage of information that is not available to the general public. Confidence in the stock market is based on the belief of tens of millions of average investors that they have fair access to information from which they can make a reasoned purchase decision.

3. In your reasoned opinion, should United States congressional representatives be prohibited from engaging in insider trading? Why or why not? Why should the Stock Act be enacted if laws against insider trading already exist?

Although student opinions may vary in response to this question, most will likely agree that United States congressional representatives should be prohibited from engaging in insider trading. Not only is trading on such information arguably unfair, since the general public may not have access to information that is available to those working "under the congressional dome," but congressional representatives would likely be tempted to vote either for or against certain bills, depending on how their vote would affect their investments. In your author's opinion, this is a classic "conflict of interest" scenario—A congressperson's vote for a bill that is consistent with his or her investment strategy may conflict directly with the "common good" of the people the congressperson is in Washington, D.C. to represent.

The argument against the Stock Act is that a Congress-specific law is not necessary, since insider trading laws already exist. The argument for the Stock Act is that even though such laws already exist, a Congress-specific law would send a powerful, focused message to congressional representatives that trading stock based on information acquired while serving in Congress is particularly wrong.

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Video Suggestions

Video 1: "'Liking" Facebook's IPO Could Be Problematic for Retail Investors"

http://bottomline.msnbc.msn.com/_news/2012/01/30/10271517-liking-facebooks-ipo-could-be-problematic-for-retail-investors

Note: Before answering the Video 1 Discussion Questions, have students read the following article, also located at the above-referenced website:

According to the article, the buzz over Facebook's forthcoming IPO has been propelled at least in part by retail investors hoping for a piece of the social media giant's predicted $75 billion to $100 billion valuation.

But when the company's stock eventually hits trading floors, Facebook fans who want to get in on the company's initial public offering are likely to feel as left out as the Winklevoss twins.

Google's 2004 IPO was conducted via a complicated auction process intended to level the playing field between big trading firms and the little guys. Absent such an arrangement, the advantage tends to go to the players with the most trading volume and money.

By the time your average online brokerage customer can get his or her hands on a stock like Facebook, it's probably going to already be on an upward trajectory. And those investors hoping to buy on a dip should think twice.

Last year's spate of tech IPOs saw the stock of companies such as LinkedIn and Zynga put on an initial bounce before stabilizing. However, the hype surrounding Facebook's IPO has been building for so long that the stock price could stay elevated for longer than other recently debuted tech stocks, analysts say.

"The pool of small investors is so big, I think it's going to support the stock for a while," said Sam Hamadeh, founder and CEO of research company PrivCo.

Another issue for potential investors is the meteoric rise in valuation estimates for Facebook since its founding.

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In 2005, the company was estimated to be worth $100 million. While the current valuation range has actually dropped a bit since some analysts suggested the company could be worth more than $100 billion, a more modest $75 billion valuation is still "very aggressive," said Hamadeh.

Estimates for Facebook's true value vary. Shayndi Raice, who covers the social media beat for The Wall Street Journal told CNBC in an interview Monday that it could generate $6 billion in revenue this year. (Hamadeh estimates Facebook had revenues of $3.8 billion in 2011.)

In an event in Dallas over the weekend, Facebook's COO Sheryl Sandberg talked about creating communities through social technology. If the company wants to fulfill its promise to shareholders it would do better to focus on its relationships with advertisers, said Nate Elliott, an analyst at Forrester Research.

"They need to get better at using the data they have," he said. "They have to help the marketers who are spending there [to] improve the performance of the money they're spending."

Large companies in particular, Elliott said, are going to start demanding better returns on their advertising dollars.

To that end, Elliott suggested that Facebook could build or buy an ad platform with part of the $10 billion it hopes to net in an IPO. It also will have to pay more to recruit and retain top talent, since it won't have pre-IPO options to woo employees.

Retail investors who don't have the patience to wait could seek out a mutual fund specializing in IPOs, but think of it as a lottery ticket, not your retirement plan, Hamadeh cautioned.

"The track record for IPOs is not a great one," he pointed out. The idea of an IPO market is to invest in a company's potential while it's still in its infancy. In the case of Facebook, Hamadeh said, its valuation already assumes five to tenfold growth.

"It could be dead money for the next five years until it catches up with that valuation," he said. In other words, retail investors hoping to cash in on the social media juggernaut will have to learn patience one way or another.

Discussion Questions

1. What is an "IPO?"

An initial public offering, or "IPO," represents the first sale of stock by a private company to the public. IPOs are often issued by smaller, younger companies seeking the capital to expand, but can also be done by large privately owned companies, such as Facebook, looking to become publicly traded.

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2. Should the government, through regulations on the stock market, "level the playing field" in terms of mandating equal opportunity for small investors (such as individuals, rather than institutional investors such as large brokerage firms) to purchase stock in an IPO? Why or why not?

This is an opinion question, so student responses will likely vary in response to this question. Small investors are often "crowded out" of IPOs by large institutional investors, so for anyone concerned about an "uneven playing field," government regulation might be the only solution (aside from a company issuing an IPO designating a certain number of shares specifically for small investor purchase).

3. In your reasoned opinion, will a stock purchase through Facebook's IPO constitute a wise (i.e., profitable) investment? Why or why not?

This is an opinion question, so student responses will likely vary in response to this question. In reality, only the market can determine the true value of Facebook stock. Valuation will be determined by a host of factors, including (but not limited to) Facebook's internal performance, the extent of the company's competition, the performance of the stock market, and the performance of the economy as a whole.

Video 2: "Mortgage Misconduct?"

http://abclocal.go.com/kfsn/video?id=8510734

Note--Before watching the video, read the following article:

"Proposed Mortgage Settlement Offers Little Relief for Homeowners"

http://bottomline.msnbc.msn.com/_news/2012/01/24/10226930-proposed-mortgage-settlement-offers-little-relief-for-homeowners

Note: Since this article was written, the proposed settlement was reached.

According to the article, a proposed $25 billion settlement between five big banks, state attorneys general and the Obama administration may help resolve some of the thornier legal issues surrounding the mortgage mess that caused the housing market to collapse.

It will do relatively little to stop the ongoing wave of home foreclosures or revive the deeply depressed housing market, however.

Talks got underway more than a year ago after a series of private lawsuits focused national attention on an outbreak of "robo-signing" and other shoddy and fraudulent document processing practices by mortgage servicers foreclosing on homes. Most of the key issues that have sidelined past tentative

agreements have been addressed, according to a source close to the talks who was not authorized to discuss the proposal.

But a final agreement could still be weeks away. Iowa Attorney General Tom Miller said recently that some terms still have to be resolved. He made clear that the parties still have significant work ahead of them.

"We have not yet reached an agreement with the nation's five largest servicers, and we won't reach a settlement any time this week," he said in a statement.

The deal would require banks to devote roughly $17 billion of the total settlement to various types of loan modifications for homeowners. Rather than paying that amount in cash, lenders would receive a series of credit toward that amount based on a complex formula that would assign different levels of credit to different types of modifications. Decisions about which loans to modify would be left to bankers.

The program would apply largely to the relatively small universe of home loans owned outright by the five lenders, including Bank of America, JPMorgan Chase, Wells Fargo, Citibank and Ally Financial (formerly GMAC). Loans held by government-controlled Fannie Mae or Freddie Mac — some 60 percent of the 31 million U.S. home loans outstanding — would not be covered in the deal. Another $5 billion would be set aside to help support state foreclosure relief programs. A portion of those funds would be used to pay homeowners who can demonstrate they were victims of abusive or fraudulent foreclosure practices. Those awards would average about $1,800. The system for arbitrating those claims and distributing those checks has yet to be worked out, according to the source close to the talks, who asked not to be named because he was not authorized to discuss the proposal publicly.

Another $3 billion would be applied to a program to refinance mortgages at lower rates.
If enough states go along, lenders would emerge largely unscathed from the settlement, according to Capital Economics housing analyst Paul Diggle.

"The total size of the scheme is unlikely to give lenders too many sleepless nights," he said.
To put the $25 billion settlement in perspective, the amount represents about three-tenths of a percent of the lenders' total assets, said Diggle. Because much of the settlement amount represents paper credits against loan modifications that may already be underway, the bottom-line impact would be even less than $25 billion.

The impact on pending foreclosures would also be very small. Diggle figures that as many as 100,000 borrowers could be helped by the settlement, a fraction of the 2.3 million homes in the foreclosure pipeline.

The program would help some "underwater" homeowners who now owe more than their home is worth, cutting their balances by an average of $20,000. But the overall impact of $17 billion in

reduced loan balances would be far too small to help revive the housing market. There are currently some 11 million borrowers with an average shortfall of roughly $65,000 — or a total of $700 billion — in "negative equity," according to the latest data from CoreLogic.

As details of the settlement have emerged, critics have argued the proposal lets bankers off the hook too easily for the mortgage mess they created with sloppy underwriting during the housing boom.

"The reported settlement terms would amount to a slap on the wrist, allowing banks to write down the investments of many of my constituents, without sacrificing anything," said Ohio Sen. Sherrod Brown in a letter to White House officials involved in the talks.

President Barack Obama may tout the settlement in his State of the Union address Tuesday, after his administration has been pressuring state officials to wrap up a deal. Some consumer advocates say the White House, eager to broker a settlement, has supported terms more likely to win the bankers' approval.

"The Obama administration has been has been more concerned with settling quickly than with settling in a way that moves the ball forward for homeowners," said Diane Thomsen, an attorney with the National Consumer Law Center.
Critics of the deal argue that, while it may spur lenders to act more quickly in the short term, it also creates a cap on the amount of mortgage relief they're required to provide.

Ironically, a settlement could also have the perverse effect of speeding up the foreclosure pipeline. In October 2010, major banks temporarily suspended foreclosures to address complaints of widespread deceptive foreclosure practices, creating a backlog.

"A resolution of the robo-signing scandal leaves the way open for banks to re-start foreclosure proceedings that were temporarily halted after the scandal first came to light," said Diggle.

It's unlikely that all 50 states will sign off on the deal. Frustrated with the progress of the talks, California officials said in September they would not agree to a settlement. New York, Delaware, Nevada and Massachusetts, sued the five banks in December over deceptive foreclosure practices after all but abandoning settlement talks.

The settlement would provide strict guidelines to address those complaints, according to the source close to the settlement talks. Abusive foreclosure procedures have already been targeted by federal bank regulators. Last year, the Federal Reserve issued a series of "cease and desist" orders and the Office of the Controller of the Currency conducted a comprehensive review of the worst practices. In April, the OCC launched an enforcement action against eight large mortgage servicers monitoring those practices and instituting reforms.

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Among the abuses regulators found were so-called "dual track processing" in which lenders working with a homeowner to modify a mortgage continue with legal proceedings to foreclose. In other cases, lenders had foreclosed without properly showing they had the right to do so.

As state courts continue to cite lenders for faulty documentation, some of the attorneys general don't think those efforts by federal regulators have fixed the problem. On Tuesday, Massachusetts Attorney General Martha Coakley said she plans to continue her lawsuit, which claims that lenders are foreclosing illegally on homeowners in her state without properly demonstrating that they held the mortgage.

"Our pending lawsuit seeks real accountability from the banks and real relief for homeowners," she said in a statement. "We also need assurances that eligible Massachusetts borrowers will get relief and consistent treatment from the banks."

Discussion Questions

1. Isn't a mortgage a contract; i.e., a binding agreement between two (2) or more parties? If so, why should the government be involved in moderating a mortgage dispute between the mortgagor (borrower) and the mortgagee (lender)?

Those concerned about the integrity of contracts and contract law might be concerned about government intervention in agreements between borrowers and lenders. A mortgage is, after all, a binding agreement between borrower and lender based upon terms outlined in the mortgage contract. Arguably, the more the government intervenes in contract matters in terms of rewriting the deal to favor a particular party, and/or deeming certain contract provisions (or the entire contract) unenforceable, the less contracts and contract law mean.

2. Note that the settlement provides billions of dollars for, among other things, interest rate modification (i.e., lowering) and foreclosure relief. In your reasoned opinion, should the government be involved in renegotiating mortgage interest rates originally agreed upon by borrowers and lenders? Why or why not? Should the government (either through taxpayer funds or government-big bank settlement proceeds) provide financial assistance for borrowers who have had their homes foreclosed? Why or why not?

In terms of the government renegotiating mortgage interest rates originally agreed upon by borrowers and lenders, see the response to Discussion Question Number 1 above regarding the integrity of contracts and contract law.

In terms of whether the government should provide financial assistance for borrowers who have had their homes foreclosed, this is an opinion question, so student opinion will likely vary in response to this question. In your author's opinion, such assistance might create a dangerous precedent, but our government has already established a corporate-assistance precedent in terms of the multi-billion-dollar corporate "bailouts" extended during both the Bush and Obama administrations!

3. In your reasoned opinion, who is most responsible for the mortgage crisis: lenders, borrowers, or the government?

This is an opinion question, so student opinion will likely vary in response to this question. In your author's opinion, "all of the above" are to blame: lenders, for over-qualifying borrowers for mortgage loans; borrowers, for choosing to purchase homes worth more than they could afford; and the government, for failing to regulate the mortgage industry closely enough before the speculative "bubble burst."

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Of Special Interest

This section of the newsletter addresses the question of whether it is legal/ethical for employers to impose "term limits" on employees.

Ethical Dilemma

"'Term Limits' for Employees?"

http://abcnews.go.com/blogs/business/2012/01/term-limits-for-employees/

The article states:

Term limits for politicians? Sure. But for employees?

Revel, a new casino set to open later this year in Atlantic City, New Jersey, has announced it will impose term limits on its front-of-the-house employees, including bellhops, dealers and waiters. Employees in those and other positions will be hired for terms of four to six years only. After that, they will have to reapply for their jobs, competing against other candidates.

The requirement will apply no matter how their high performance reviews.

Revel doesn't use the phrase "term limits." Instead, it describes these jobs as having a "defined service cycle.'" The company's website says the casino is looking for people who are "humble" and "hungry," and who "don't overly complicate things." In a December statement it said it hoped the policy would help it to attract highly professional people "inspired by a highly competitive work environment."

Atlantic City has one of those: As of November, the local unemployment rate stood at 16.6 percent.

Philadelphia employment attorney Alice Ballard wonders why Revel or any employer would want to put a high-performing employee through this gantlet, unless it was for reasons unrelated to performance. She suggests age as one possibility.

Brian Tyrrel, a professor of hospitality management at New Jersey's Stockton College, speculates Revel might want to give employees a powerful stimulus to move up or out: Since term limits won't apply to the casino's managers, a roulette dealer, say, would have a compelling reason to try to pull himself up by his rakes.

Revel, in its December statement, implies the purpose of the policy is to ensure guests get highly focused attention from the employees most likely

to interact with them. "The defined term roles are the most critical in the entertainment and hospitality business," it says, "and their engagement with our guests will help define us."

Jeff Payne, who has worked for 23 years for Caesars Palace and serves drinks in Caesars high-roller lounge, was asked by National Public Radio how he felt about Revel's term limits policy.

"How can you buy a car if you don't know you're going to have a job?" he asks. How can somebody with term limits know if he'll be able to buy or refinance a home? Casino jobs, says Payne, have traditionally been decent and good-paying. "But my concern is," he says, "You get this job — and then you have no job security."

Discussion Questions

1. How does the concept of "employment at will" relate to "term limits" for employees?

The two concepts coincide nicely. "Employment at will" refers to an employer's right to fire someone for any reason (aside from discriminatory reasons, such as race, age, disability, etc., proscribed by state and/or federal law). "Term limits" for employees would certainly fall within the employer's wide-ranging "employment at will" discretion.

2. Should it be legal for employers to impose term limits on employees? Why or why not?

This is an opinion question, so student responses will likely vary in response to this question. Those who favor the employment-at-will right of employers will likely also support term limits for employees, while those who are against employers' employment-at-will right will likely cringe at the notion of employee term limits!

3. Is it ethical for employers to impose term limits on employees? Why or why not?

This is an opinion question, so student responses will likely vary in response to this question. Make sure students understand that just because a certain act is legal, that does not necessarily make the act ethical. Have students internalize a situation where their employment is lost due to expiration of a term limit, and ask them: Should you lose your job simply because your "time is up?"

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Of Special Interest

This section of the newsletter will assist you in covering:

1) Article 2 ("Two Auto Parts Suppliers Fine $548M for Price Fixing") of the newsletter; and

2) Article 3 ("Stock Act: Senate Moves to End Congressional Insider Trading") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 2):

Use the following article to discuss the concept of price fixing, as well as regulatory attempts to control price fixing, with students:

"Price Fixing, the Perpetual Sequel: Feds Face a Steady Stream of Pricing Conspiracies Despite Attempts to Use the Real Drama Behind 'The Informant!' To Shape Corporate Behavior"

http://www.businessweek.com/bwdaily/dnflash/content/sep2009/db20090928_842438.htm

According to the article, with their furtive meetings, coded communication, and globe-spanning criminal conduct, price-fixing schemes are sometimes described by journalists as having "all the makings of a Hollywood thriller." Even when the price that's being fixed is for an unsexy product that's invisible to consumers. In fact, one such scheme that unfolded in the 1990s involving grain-processing giant Archer Daniels Midland (ADM) did capture the attention of movie makers. Director Steven Soderbergh bases his latest film, *The Informant!*, on the ADM story. Starring Matt Damon, it's likely now showing at a multiplex near you.

Long before Damon grew his mustache for the role of ADM executive-turned-whistleblower Mark Whitacre (aka "the informant"), a much different and more selective audience had been treated to footage showing how ADM conspired at meetings with its competitors to rig the market for lysine, a livestock-feed additive that racked up worldwide sales of $600 million a year in the '90s. The real Whitacre had teamed up with the FBI to secretly tape hours of those meetings. Since ADM pleaded guilty to price fixing in 1996, lawyers have frequently used those tapes (available to the public upon request to the U.S. Justice Dept.) to train corporate clients on the legal consequences of price fixing, which can be severe. ADM paid $100 million in fines, and two top executives ended up in prison.

The FBI eventually discovered that, even as Whitacre was ratting out ADM, he was embezzling $9 million from the company. That landed him in prison for 8½ years. Released in 2006, he is now chief operating officer of Cypress Systems, a Fresno (Calif.) company that markets nutritional supplements.

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But for all the splashy headlines, stiff sanctions, and caught-on-tape teaching moments generated by the ADM case, price fixing appears to be as pervasive as ever. "We played those videos in antitrust compliance programs for years," says Kent A. Gardiner, a onetime government antitrust prosecutor who is now chairman of the law firm Crowell & Moring in Washington, D.C. "I guess it didn't entirely work."

Recent cases involve everything from paraffin wax to computer chips to air cargo fees. Just this month, the Web site for the European Commission trumpeted an investigation into cement companies, and in August, Epson Imaging Devices (6724.T) pleaded guilty to fixing prices of liquid-crystal displays used in Motorola (MOT) Razr cell phones. "New ones keep popping up all the time," says John M. Connor, a professor at Purdue University who has done extensive research on cartels.

In a June 2006 speech, Thomas O. Barnett, then Assistant Attorney General for Antitrust, called cartels "the supreme evil of antitrust." During Barnett's five years at the Justice Dept.—he returned in January to private practice at Covington & Burling in Washington—his department meted out $1.8 billion in fines against 50 corporations and threw dozens of executives into prison.

Still, Barnett said in his speech, price fixing persists "perhaps because the anticompetitive [profits] available through cartel behavior can be so large." Connor says cartels typically push prices up at least 20%, and sometimes much more. The European Commission has estimated that cartels impose excess costs of €4 billion to €5 billion annually on companies in Europe alone, and from 2004 to July 2009 the commission imposed €10 billion in penalties.

Price fixing, in short, imposes serious costs and, if antitrust cops catch on, can result in serious penalties. So how is it that the makers of *The Informant!* decided the film should be a comedy? Well, if you take a look at some of the actual surveillance video of ADM executives meeting with their competitors, you'll see how even they found what they were doing to be pretty funny. (Rather than sending away for the tapes from the Justice Dept., you can view one from January 1995, courtesy of Marginal Revolution, a blog run by a pair of economics professors at George Mason University.)

Staggering their arrival at that 1995 meeting to avoid raising suspicion, the executives joke that some of the empty seats in the Atlanta hotel conference room are for the FBI or for poultry processor Tyson Foods (TSN), one of their largest customers—and victims. All this is recorded by a camera hidden in the room. But Whitacre, the FBI mole, was initially missing a second means of surveillance that he was supposed to have. At the end of this tape you can hear a knock at the door and one of the executives in the room says "FTC," joking that it is someone from the Federal Trade Commission, which, like the Justice Department, enforces the anti-competition law. In fact, according to Justice antitrust prosecutor Scott D. Hammond, the person at the door was an FBI agent disguised as a hotel employee. He was there to hand Whitacre a briefcase with a hidden audio recorder that he had forgotten in the hotel restaurant.

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Hollywood couldn't make this stuff up.

Teaching Tip 2 (Related to Article 3):

Use the following summary of one of the most famous insider trading cases to further discuss the concept of insider trading with students:

Martha Stewart Insider Trading Case

http://www.legalflip.com/Article.aspx?id=79&pageid=401

According to the Securities and Exchange Commission (SEC), Martha Stewart sold approximately 4,000 shares of ImClone stock (a biopharmaceutical company) on December 27, 2001, one day before the Food and Drug Administration ("FDA") announced that a drug made by ImClone failed to get approval. The day after she sold the stock, on December 28, 2001, the stock dropped in price by 18% and she avoided a loss of approximately $46,000. But Martha wasn't the only one to sell around this time. In fact, many of the other insiders at ImClone also sold their stock around this time in December, including the Samuel Waksal (the founder of ImClone), Aliza Waksal, Jack Waksal, John Landes (ImClone's lead attorney), Ronald Martell (Vice President), and Peter Bananovic, Martha Stewart's broker. They all each sold millions of dollars worth of stock, only to watch the stock plummet shortly thereafter.

Martha Stewart denied the insider trading charges brought against her, and said she did nothing wrong. However, a jury found otherwise and convicted her of 4 criminal counts including making false statements, conspiracy, and obstruction of justice. But the insider trading charge was dropped. She was sentenced to five months in prison, and two years probation for her criminal acts.

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Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 3, 7, 45 and 47	Chapters 38, 45 and 49	Chapters 2 and 42	Chapters 7 and 47
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 2, 3, 23 and 25	Chapters 6, 22 and 25	Chapters 2 and 24	Chapters 2 and 23
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 2, 5, 48, 49 and 50	Chapters 24, 45 and 48	Chapters 4 and 51	Chapters 5, 49 and 50
Barnes et al., Law for Business	Chapters 2, 5, 45 and 46	Chapters 31, 34, 43 and 46	Chapters 3 and 25	Chapters 5 and 45
Brown et al., Business Law with UCC Applications	Chapters 3, 5, 20 and 40	Chapters 23 and 40	Chapters 1, 35 and 36	Chapters 5 and 40
Reed et al., The Legal and Regulatory Environment of Business	Chapters 3, 12, 16 and 17	Chapters 7, 15 and 17	Chapters 2 and 12	Chapters 12 and 16
McAdams et al., Law, Business & Society	Chapters 4, 10 and 15	Chapters 8, 9 and 15	Chapters 2 and 12	Chapters 4 and 10
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 3, 19, 21 and 22	Chapters 16, 21 and 23	Chapters 5 and 11	Chapters 19 and 22
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 3 and 14	Chapters 7 and 13	Chapters 1 and 11	Chapters 1 and 14

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This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 11th Edition 2012© (0073377716)
Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
Kubasek et al., Dynamic Business Law, 2nd Edition 2012© (0073377678)
Kubasek et al., Dynamic Business Law: The Essentials, 2nd Edition 2013© (0073524972)
Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 15th Edition 2013© (0073377643)
McAdams et al., Law, Business & Society, 9th Edition 2009© (0073377651)
Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)
Melvin, The Legal Environment of Business: A Managerial Approach 2011© (0073377694)

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