

Minnesota federal court decision is warning to lead generators

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A Minnesota federal district court [recently ruled](#) that lead generators for a payday lender could be liable for punitive damages in a class action filed on behalf of all Minnesota residents who used the lender's website to obtain a payday loan during a specified time period. An important takeaway from the decision is that a company receiving a letter from a regulator or state attorney general that asserts the company's conduct violates or may violate state law should consult with outside counsel as to the applicability of such law and whether a response is required or would be beneficial.

The amended complaint names a payday lender and two lead generators as defendants and includes claims for violating Minnesota's payday lending statute, Consumer Fraud Act, and Uniform Deceptive Trade Practices Act. Under Minnesota law, a plaintiff may not seek punitive damages in its initial complaint but must move to amend the complaint to add a punitive damages claim. State law provides that punitive damages are allowed in civil actions "only upon clear and convincing evidence that the acts of the defendants show deliberate disregard for the rights or safety of others."

In support of their motion seeking leave to amend their complaint to add a punitive damages claim, the named plaintiffs relied on the following letters sent to the defendants by the Minnesota Attorney General's office:

- An initial letter stating that Minnesota laws regulating payday loans had been amended to clarify that such laws apply to online lenders when lending to

Minnesota residents and to make clear that such laws apply to online lead generators that “arrange for” payday loans to Minnesota residents.” The letter informed the defendants that, as a result, such laws applied to them when they arranged for payday loans extended to Minnesota residents.

- A second letter sent two years later informing the defendants that the AG’s office had been contacted by a Minnesota resident regarding a loan she received through the defendants and that claimed she had been charged more interest on the law than permitted by Minnesota law. The letter informed the defendants that the AG had not received a response to the first letter.
- A third letter sent a month later following up on the second letter and requesting a response, followed by a fourth letter sent a few weeks later also following up on the second letter and requesting a response.

The district court granted plaintiffs leave to amend, finding that the court record contained “clear and convincing prima facie evidence...that Defendants know that its lead-generating activities in Minnesota with unlicensed payday lenders were harming the rights of Minnesota Plaintiffs, and that Defendants continued to engage in that conduct despite that knowledge.” The court also ruled that for purposes of the plaintiffs’ motion, there was clear and convincing evidence that the three defendants were “sufficiently indistinguishable from each other so that a claim for punitive damages would apply to all three Defendants.” The court found that the defendants’ receipt of the letters was “clear and convincing evidence that Defendants ‘knew or should have known’ that their conduct violated Minnesota law.” It also found that evidence showing that despite receiving the AG’s letters, the defendants did not make any changes and “continued to engage in lead-generating activities in Minnesota with unlicensed payday lenders,” was “clear and convincing evidence that shows that Defendants acted with the “requisite disregard for the safety” of Plaintiffs.”

The court rejected the defendants’ argument that they could not be held liable for punitive damages because they had acted in good-faith when not acknowledging the AG’s letters. In support of that argument, the defendants pointed to a Minnesota Supreme Court case that held punitive damages under the UCC were not recoverable where there was a split of authority regarding how the UCC provision at issue should be interpreted. The district court found that case “clearly distinguishable from the present case because it involved a split in authority between multiple jurisdictions regarding the interpretation of a statute. While this jurisdiction has not previously interpreted the applicability of [Minnesota’s payday loan laws] to lead-generators, neither has any other jurisdiction. Thus there is no split in authority for the Defendants to rely on in good faith and [the case cited] does not apply to the present case. Instead, only Defendants interpret [Minnesota’s payday loan laws] differently and therefore their argument fails.”

Also rejected by the court was the defendants’ argument that there was “an innocent and equally viable explanation for their decision not to respond or take other actions in response to the [AG’s] letters.” More specifically, the defendants claimed that their decision “was based on their good faith belief and reliance on their own unilateral company policy that that they were not subject to the jurisdiction of the Minnesota Attorney General or the Minnesota payday lending laws because their company policy only required them to respond to the State of Nevada.”

The court found that the defendants' evidence did not show either that there was an equally viable innocent explanation for their failure to respond or change their conduct after receiving the letters or that they had acted in good faith reliance on the advice of legal counsel. The court pointed to evidence in the record indicating that the defendants were involved in lawsuits with states other than Nevada, some of which had resulted in consent judgments. According to the court, that evidence "clearly show[ed] that Defendants were aware that they were in fact subject to the laws of states other than Nevada despite their unilateral, internal company policy."

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