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Trapped by title loan?

Circuit Court to review case in which borrower faced 300% interest

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In December 2001, Kenneth Jones was desperate. A skilled machinist, he had been laid off when Emco Metals was bought by another company and his unemployment benefits had expired.

He needed cash to buy food and pay the rent.

Like many others in Wisconsin, Jones took out a loan using his car as collateral. He thought he would be able to easily pay back the \$800.

Wisconsin Auto Title Loans, the lender, charged him 300% interest, plus the cost of a \$150 auto club membership that he didn't need.

Jones said he thought he had whittled the loan down to \$400, but he was stunned to get a letter saying he owed \$1,700 and his car, a 1992 Infiniti, was about to be repossessed.

"I knew the car was worth more than \$800, and I was determined to fight for it," Jones said in an interview last week.

The high interest rate charged by Wisconsin Auto is the subject of a lawsuit that is going to be decided soon. Consumer advocates say charging such high interest rates offends the conscience of the community; defenders say it provides access to credit that people such as Jones would not otherwise have.

What a court says in the case ultimately could affect the legality of similar high-interest loans throughout the state. Legal rulings are pending on whether the case can be turned into a class-action lawsuit - thereby opening it up to potentially hundreds of other similar cases - and whether the 300% interest rate was unfair. And Jones' issues in the case already have received a favorable first reaction from the state Supreme Court.

Typically loans of this kind are made for a quarter to a third of the value of the vehicle used as collateral. Borrowers are required to purchase roadside service insurance, even if they have other services, as Jones did. The borrower also is required to provide the lender keys to the car, making repossession easier. Failure to repay the loan could result in the vehicle being repossessed. The loan usually comes due within a month, but it can be rolled over again and again.

Peter Koneazny, a lawyer for the Legal Aid Society, the Milwaukee non-profit agency that often advocates for the poor, is handling Jones' case. He took Jones' lawsuit earlier to the Wisconsin Supreme Court when Wisconsin Auto asserted that Jones had signed away his right to his day in court by agreeing to have any dispute settled by arbitration, a procedure for which Jones would have to pay. The high court sided with Jones, saying the clause was so egregiously unfair that it was unenforceable. The court called the arbitration clause unconscionable.

At least two of the high court justices - Louis Butler and N. Patrick Crooks - wanted to go further, calling the loan practices predatory and urging state lawmakers to act.

"The Legislature can put an end to this practice in future cases by capping auto title loans at an annual percentage rate it determines to be reasonable," Butler wrote in a concurring opinion. "Anything less short-changes the public."

The case was sent back to Milwaukee County Circuit Court.

Earlier this month Circuit Judge Jean DiMotto dismissed a motion by Wisconsin Auto that had asserted that the case was simple: Jones borrowed the money and was in default of the loan; therefore, Wisconsin Auto has a right to reclaim the car.

She is expected to make a decision April 25 on the key issues: whether the 300% interest rate should be allowed and whether the case should be a class-action lawsuit. Her decision will likely be appealed, meaning the state's high court could render a verdict.

Wisconsin Auto declined to speak to a reporter regarding Jones' case, but earlier, it and other lenders said they are providing credit to those who would otherwise not have access to normal lending institutions. The high rates, defenders say, are justified by the high risks.

High interest loans have become big business, but Jean Ann Fox, director of consumer protection for the Consumer Federation of America, based in Washington, D.C., believes the tide is turning: Now about half of the states have reimposed caps on interest rates.

"We've seen what happened in the mortgage market with high-risk, high-interest rate loans and no checks on a consumer's ability to repay the loans," Fox said. "The same thing is true with auto title loans and payday loans."

Wisconsin lawmakers have not acted to create interest caps, although a bill is pending that would limit the number of times such loans can be rolled over once the debt comes due.

"There are so many ways to get around that," Fox said. "You have to make loans affordable and based on a person's ability to pay."

Wisconsin, Fox said, is almost uniquely bad for the consumer because it permits not only auto title loans, but also allows payday loans, which are short-term loans that often charge more than the auto title loans.

Stephen Meili, director of the consumer law clinic at the University of Wisconsin Law School in Madison, who has filed a lawsuit challenging the payday loans, said:

"The problem is that borrowers get trapped in this downward spiral. They pay far more in fees and interest than the amount they borrowed."

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