

Status of Action Against KeyBank

We are aware that many of you have been receiving letters from KeyBank (either directly or through your personal lawyers) threatening to put you back into collection and/or offering a settlement based on the number of flight hours you had while enrolled at the school. Because we are counsel for the proposed class, we are unable at this time to give you individual advice as to how to respond to these letters but we do want to give you an update on the status of the case so you and your lawyer can assess your individual situation.

As most of you know, in April the action filed by our office against KeyBank on behalf of all California Silver State Helicopter students whose loans were funded by KeyBank and who were enrolled as of the date of school's bankruptcy was dismissed by a California federal district court judge. In the settlement letter from KeyBank, its lawyers refer to the 23 page order from the court dismissing the case. What KeyBank fails to tell you, however, is that the court spent the first 15 pages of its opinion explaining how and why we properly and adequately alleged that KeyBank aided and abetted SSH in violating federal consumer protection regulations and thereby violated California's consumer protection law. The judge dismissed the case not because KeyBank is innocent of wrongdoing (actually, he concluded the exact opposite based on allegations which KeyBank cannot refute) but because he believes federal banking law prevents you (as opposed to the federal government) from suing a national bank. In evaluating your options this is a critical distinction (which presumably is why KeyBank did not disclose it in its letters).

We are working on our Opening Brief for the Ninth Circuit Court of Appeal which will be filed on July 30, 2010. As part of the drafting process, we have been consulting with several legal experts on the issue the court relied on to dismiss the case – legally referred to as “federal preemption”. These experts are uniformly confounded by the judge's ruling which is internally inconsistent and not well-reasoned (which is very unusual for this judge who is a very well respected jurist). They believe that he dismissed the case not because he believes we have no case but because he knew this case presents unprecedented threshold legal issues that would almost certainly have been decided in the Ninth Circuit Court of Appeals no matter who prevailed at trial. By ruling the way he did at this point in the case, both the students and KeyBank will now get a final determination on these issues much sooner and with less expense than had we gone to trial and then faced an appeal. Their opinion – which we share – is supported by the fact that the Ninth Circuit is generally considered the most consumer protection oriented circuit court

in the federal system and the district court judge has long been viewed a champion of individual rights.

Shortly after we file our Opening Brief, several national consumer protection organizations and, hopefully several state attorneys general, will file what are referred to as “friend of the court” briefs (*amicus curiae*) arguing to the Court of Appeal why the district court judge was wrong and how his ruling, if upheld, will be detrimental for all consumers who borrow money from national banks. While of course we cannot predict how the Court of Appeals will rule, we and the appellate lawyers we are working with are optimistic about obtaining a reversal of the district court’s dismissal.

With respect to KeyBank’s settlement proposal, the Bank is approaching settlement from the perspective that what you borrowed is money for flight hours rather than FAA certifications or job opportunities. Based on the information we have reviewed, this approach will result in the large majority of the students having to repay in excess of 80% of their principal loan balance plus most of the accrued interest. Moreover, KeyBank has not offered to reduce the interest rate going forward. By point of reference, the proposed SLX settlement that is before the court provides for between 30% - 75% loan forgiveness (depending on the number of FAA certifications received) and an across the board 3% interest rate reduction as well as a waiver of all interest accrued after SSH filed bankruptcy.

If you choose to enter into a settlement with KeyBank, you will likely be forced to give up any right you may have to participate in our class action (this applies only to California students) or in any action that may be brought in any other state in the future if the Court of Appeal rules in our favor on the California action. Also, you will likely be forced to give up any defenses you may now have in the event you are unable to comply with the terms of your settlement agreement and KeyBank has to sue you for breaching the settlement agreement. Given KeyBank’s likely demand that you give up all of your rights, coupled with the miniscule amount of offered forgiveness (for most borrowers), we do not support such a settlement while the appeal is pending. However, before making any decision whether to settle, you should consult with your personal lawyer so that you fully understand your options.

Finally, with respect to KeyBank’s letter threatening to end its “voluntary forbearance” and begin reporting your debt to the credit reporting agencies, because the case is still pending, you should have your individual lawyer inform the credit agencies in writing that this is a disputed debt and refer them to the court of appeal case. Also, because KeyBank continues to attempt to force this dispute

into binding arbitration, it is very unlikely KeyBank will file a lawsuit against you in court (if they do, we will argue it has waived its arbitration argument). Based on the Master Promissory Notes we have reviewed, KeyBank will have to initiate arbitration against each of you individually with JAMS in each of your respective jurisdictions. KeyBank will have to initiate the arbitration and front 100% of expense of doing so. So be sure you advise your lawyer that you have been served with the arbitration papers. Also, please be sure to contact us immediately so we can provide you and your lawyer with whatever assistance we are able to.

If you have any questions, please contact us at keybanklitigation@gmail.com. *Again, however, we cannot give advice on an individual basis and even as to the class claims, at this time we represent only California students.* Regardless of whether you are a California resident or a resident of another state, we strongly encourage you to contact your state's Attorney General's office (usually the department of consumer protection) and urge the AG to take action against KeyBank and support our efforts before the Ninth Circuit.