

Banking and Finance Law Daily Wrap Up, TOP STORY—Payday lenders' owner and attorney criminally charged with TILA and RICO violations, (Feb. 11, 2016)

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By John M. Pachkowski, J.D.

A criminal indictment charging the owner of a payday lending enterprise and the enterprise's attorney of criminally violating the Truth in Lending Act has been unsealed according to Preet Bharara, the United States Attorney for the Southern District of New York. The indictment also alleged that the owner—Scott Tucker—and the attorney—Timothy Muir—also violated the Racketeer Influenced and Corrupt Organizations Act.

The indictment alleged that Tucker and Muir operated a nationwide internet payday lending enterprise that systematically evaded state laws in order to charge illegal interest rates as high as 700 percent on loans. The payday lending enterprise did business under the names Cash Loans; United Cash Loans; US FastCash; 500 FastCash; Advantage Cash Services; and Star Cash Processing. The indictment further alleged that the payday lending enterprise evaded state usury laws by entering into agreements with several Native American tribes that they owned and that operated parts of the payday lending enterprise, so that when states sought to enforce laws prohibiting the loans, the payday lending enterprise would claim to be protected by sovereign immunity. As consideration for the agreements, the tribes received payments representing one percent of the revenues from the portion of the payday lending enterprise's business that the tribes purported to own.

False TILA disclosures. The indictment alleged that Tucker and Muir violated TILA by materially understating the amount a loan would cost. Although the payday lenders' TILA Box indicated that a consumer would pay \$30 in interest for every \$100 borrowed, the loans' repayment schedules were structured in a way that the finance charge for a \$500 loan was not \$150, but \$1,420.

Sham tribal ownership. To address the agreements that the payday lending enterprise entered into with several Native American tribes, Bharara also announced that two tribal corporations controlled by the Miami Tribe of Oklahoma had entered into a non-prosecution agreement. As part of the agreement, the tribal corporations agree to forfeit \$48 million in criminal proceeds from the payday lending enterprise that are currently held in tribal bank accounts. The agreement also acknowledges, among other things, that a tribal representative filed false factual declarations in multiple state court actions.

Exploited struggling, everyday people. Commenting on the indictment, Bharara said, "As alleged, Scott Tucker and Timothy Muir targeted and exploited millions of struggling, everyday people by charging illegally high interest rates." He added, "But thanks to the investigative work of the FBI and IRS, this deceptive and predatory scheme to take advantage of the most financially vulnerable in our communities has been exposed for what it is—a criminal scheme."

Companies: 500 FastCash; Advantage Cash Services; Cash Loans; Star Cash Processing; United Cash Loans; US FastCash

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