

MEDIA BACKGROUNDER

Re: Argument on January 19, 2011 before the New Mexico Court of Appeals in Albuquerque
ANDREA FELTS et al. v. CLK MANAGEMENT, INC. & CASH ADVANCE NETWORK, INC.

HOW IT STARTED

Andrea Felts, a high school teacher in Albuquerque, had money problems after her divorce. In need of cash to make ends meet, she obtained several internet payday loans from what appeared to be different companies, all of which used nearly identical loan contracts. These contracts included arbitration provisions that forbid her from taking the lenders to court and stated that she could never participate in a class action lawsuit.

The loans were for \$400-500 each. Ms. Felts made the payments that were required but found herself trapped on a treadmill of debt: even after numerous payments over three months, she still owed a significant amount yet had already paid back more than the original loan.

THE CASE GOES TO COURT

New Mexico has laws capping the interest that can be charged on payday loans. The state also requires payday lenders to be licensed and to provide consumers the option of a payment plan to pay back loans.

The payday lenders that loaned to Ms. Felts were not licensed with the state, charged interest rates exceeding the legal rate, and refused to allow Ms. Felts to invoke the extended payment plan option so she could get out from underneath her debt. What's more, the payday lenders explicitly told Ms. Felts that they did not have to comply with New Mexico law.

Represented by Albuquerque attorney Rob Treinen and the Schaefer Law Firm of Minneapolis, Ms. Felts brought a class action lawsuit against these payday lenders to prevent them from continuing their unlawful lending enterprise and to seek return of the money that they had already collected from New Mexico consumers. Indeed, other payday loan customers in New Mexico were in a similar position to Ms. Felts: many were paying high rollover fees yet still weren't chipping away at the principal.

The payday lenders argued that they could not be sued because a purported affiliation with a tribal entity placed them above state law. Yet, at the same time, they refused to allow Ms. Felts access to the documents that would show whether their tribal sovereignty claim was legitimate.

After the trial court decided that the supposed tribal affiliation did not prevent Ms. Felts from going forward with her lawsuit, the lenders decided they no longer wanted the court to be the decision maker and sought to enforce the arbitration provisions. The trial court rejected this tactic as well—they ruled that the arbitration provisions were unenforceable because no consumer was likely to take on a shadowy lending enterprise with only \$400-500 at stake and with the complexity of legal issues involved; unless the claims could proceed as a class action, there was no way to justify the significant time and money required to pursue such a lawsuit.

The payday lenders appealed the trial court's refusal to enforce the class action ban and arbitration provisions. Public Justice, a national public interest law firm, has now joined with Ms. Felts' legal team to fight this appeal.

CATCH ME IF YOU CAN

Payday lending companies, which have traditionally run their businesses out of brick-and-mortar shops, are increasingly moving online where it is harder for state regulators to keep track of them and prevent their most egregious abuses. The lenders in the *Felts* suit—by claiming tribal sovereignty in addition to moving their businesses to the web—are using multiple shady tactics to evade state regulation.

New Mexico Attorney General Gary King filed an *amicus* brief with the Court of Appeals supporting Ms. Felts on crucial legal points in her appeal.

Public Justice attorney Paul Bland and Karen Meyers, director of the New Mexico Attorney General's Consumer Protection Division, will argue the appeal on January 19th in Albuquerque.

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