

### Exemption Expanded by Globe Life

The MCPA carried an exemption that it would not apply to "a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States."

If a state or federal law specifically authorized a certain practice — such as an auto repair shop charging more than 10% above its written estimate if it obtained the customer's oral consent thereto — the exemption would preclude a consumer from claiming that the shop's conduct was somehow unfair or deceptive under the MCPA.

This proviso gave merchants safe harbor in following the terms of a particular type of transaction or engaging in a particular type of conduct that had been prescribed by statute or approved by regulators.

The narrow scope of the exemption was applied in *Attorney General v. Diamond Mortgage Co.*, 414 Mich. 603; 327 N.W.2d 805 (1982).

The Defendant, cited for usurious and deceptive mortgage practices, won dismissal in the trial court on grounds that its mortgage brokering "was under the auspices of the Michigan Department of Licensing and Regulation" and thus within the exemption.

The Michigan Supreme Court reversed in a unanimous decision.

It held that the exemption was not applicable because the Defendant's real estate broker's license "was not specific authority for all of the conduct and transactions of the licensee's business."

However, *Smith v. Globe Life* recast *Diamond Mortgage* and essentially rewrote the exemption to carve out licensed businesses from coverage under the MCPA.

Smith claimed that Globe Life's certificate

absurd result.

A major impetus for the U.S. consumer movement in the 1970's was the widespread belief among law enforcement and legislatures that administrative regulation was not adequately protecting consumers.

Statutes such as the MCPA consumers thus broadly defined "trade or commerce" and proscribed blatantly unfair business practices.

It is common knowledge that regulatory agencies still offer consumers little practical recourse against unscrupulous businesses and that value of Michigan's innovative consumer protection statute has been seriously undermined by Globe Life.

Indeed, a new report by the National Consumer Law Center concludes that the Court has rendered the MCPA "worse than worthless" and that Michigan now has one of the weakest consumer protection statutes in the nation, "if not the worst."

### A Legislative Fix: H.B. 4217

The State Bar Consumer Law Section is working with a consortium of citizens' groups to persuade the Legislature to correct the result in *Globe Life*.

The Campaign to Protect Michigan's Consumers supports H.B. 4217, which would replace the words "transaction or conduct" in the exemption with "methods, acts or practices."

We hope this measure will eliminate the Court's immunity for licensed businesses and restore balance and coherence to the MCPA.

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