

No. _____

In The
Supreme Court of the United States

PHILLIP FRANCIS LUKE HUGHES,
on behalf of the Estate of Jane K. Hughes,
JOANNE HAFTER,
and all others similarly situated,
Petitioners,

v.

BANK OF AMERICA NATIONAL ASSOCIATION,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Congress enacted the Truth in Lending Act of 1968 (“TILA”), in part, to ensure that financial institutions issue meaningful disclosures to consumers as to the terms of credit usage to protect the consumer from unfair and inaccurate credit billing and practices. 15 U.S.C. § 1601(a). For several years, Bank of America fraudulently charged Petitioners and similarly situated consumers for optional mortgage insurance coverage that was expressly declined. Bank of America discreetly incorporated the unauthorized charges as nondescript line-items on monthly financial statements. The optional mortgage insurance premium charges were for a service neither disclosed on a finance charge nor agreed to in writing by the consumers as required by TILA. Consumers remained unaware of the fraudulent nature of the charges until receiving a notice from Bank of America of its intent to discontinue the mortgage insurance plan. The question presented is as follows:

Whether a financial institution that violates TILA by fraudulently charging consumers for a declined product, by including the charge as a surreptitious line-item on a monthly financial statement, necessarily places a consumer on sufficient notice of the violation such that the consumer is barred from relief as a matter of law by the one-year statute of limitations and precluded from relying upon the doctrine of equitable tolling to bring a claim.

PARTIES TO THE PROCEEDINGS

Petitioners Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes, Joanne Hafter and all others similarly situated, who were Plaintiffs-Appellants below, are current or former customers of Bank of America National Association (“BANA”) who took out secured loans through BANA.

Respondent, Bank of America National Association, which was the Defendant-Appellee below, is a nationally-chartered bank, regulated by the Office of the Comptroller of the Currency, with its principal place of business in North Carolina.

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Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes, Joanne Hafter, and all others similarly situated respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS AND ORDERS BELOW

The September 11, 2017 opinion of the U.S. Court of Appeals for the Fourth Circuit is unpublished (Pet. App. 1). The order of the United States District Court for the District of South Carolina dismissing Petitioners' case, dated February 13, 2017 (Pet. App. 5), is unreported.

JURISDICTION

This Court has jurisdiction because Petitioners seek review of a final order of the United States Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 1254 and Rules 12 and 13 of the *Rules of the Supreme Court of the United States* and the petition is timely filed within 90 days of the September 11, 2017 Circuit Court's decision.

**STATUTORY AND REGULATORY
PROVISIONS INVOLVED**

15 U.S.C. § 1605

(b)(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

STATEMENT OF THE CASE

1. Facts

Petitioners' claims were dismissed at the pleadings stage before the exchange of discovery between the parties. The facts presented below are based on the allegations contained in the Third Amended Complaint filed in the district court as well as documents incorporated into the arguments in the lower court by sworn affidavits.

On June 13, 2006, John and Jane Hughes opened a line of credit from BANA in the amount of \$120,000.00, secured by a mortgage on their home in Spartanburg, South Carolina. At the same time, the Hugheses signed an acknowledgement and authorization which allowed BANA to automatically draft loan payments from their BANA bank account. Both Jane and John Hughes were 85 years old at the time.

During the closing of the Hughes' second mortgage, BANA presented Mr. and Mrs. Hughes with a document entitled "Optional Line Protection Plan Addendum ("Addendum")." The Line Protection Plan allowed the cancellation of all or some monthly loan payments in the event of specific incidents of disability, accidental death, or involuntary unemployment. In order to elect the insurance, the document required Mr. and Mr. Hughes to specifically request enrollment in the Line Protection Plan. Mr. and Mrs. Hughes both signed a document memorializing that BANA had provided them with

the Line Protection Plan information, and that they expressly declined enrollment in the plan.

John Hughes died in October 2008 at age 87. Mrs. Hughes, shortly after closing on the mortgage with BANA, was diagnosed with impaired cognition and mobility, atypical psychosis, dementia, and renal insufficiency. Mrs. Hughes underwent major heart surgery, experienced vision impairments, including cataracts and eye surgery, lacked decisional capacity, and suffered a broken hip that required hospitalization and extensive rehabilitation at a nursing home.

Over six years after Mr. Hughes's death, on or around March 17, 2015, BANA sent a cancellation notice addressed to Mr. and Mrs. Hughes, informing them that the Line Protection Plan would be cancelled on September 30, 2015 and that BANA would no longer charge them for the Line Protection Plan. The notice also indicated that John P. Hughes was a "protected" borrower. Mrs. Hughes received a second letter from BANA dated March 25, 2017 indicating that Mr. Hughes had selected "6 month, Involuntary Unemployment, Disability, Accidental Death and Hospitalization" protection at a monthly rate of 9.5% of the Hugheses' minimum monthly mortgage payment.

In response to an inquiry made on behalf of Mrs. Hughes regarding the alleged enrollment in the Line Protection Plan, BANA sent a letter dated May 6, 2015 stating that "The Line Protection Plan (Plan) addendum for [the Hugheses'] Bank of America loan ending in 4699 is enclosed." The enclosed document

had not been presented to Mr. or Mrs. Hughes prior to this date.

The Line Protection Plan premium did not appear on the mortgage finance charge disclosed to Mr. and Mrs. Hughes in 2006. Prior to March 2015, BANA did not provide any statement, notice, or communication of any sort to Mr. or Mrs. Hughes confirming that the Hugheses had elected any "Protection Plan" or that an amount was to be or was being charged to them for such a plan.

Nonetheless, BANA still withdrew an inconspicuous monthly charge of \$28.40 from the Hugheses' BANA joint checking account beginning on or about June 2006. This charge was ambiguously listed as "Ad Insurance Des:XXXXXX4374 ID: R# XXXXXXXX1070 Indn:Hughes Sr, John P Co ID:XXXXXX4660 Ppd" and appeared amid numerous other monthly charges, listed in small type with single spacing.

All other charges from BANA or its subsidiaries appearing on the Hugheses' bank statements during the relevant period were clearly designated as transactions with "Bank of America" or "BkofAmerica." In addition, none of the numbers in the Line Protection Plan transaction description were related to the Hugheses' BANA mortgage or line of credit.

As neither Mr. or Mrs. Hughes had elected Line Protection Plan coverage or had received any notice that BANA had issued such a plan to them, they were not expecting to be charged for any such service and they did not have any reason to expect that "Ad

Insurance Des:XXXXXX4374 ID: R# XXXXXXXX1070
Indn:Hughes Sr, John P Co ID:XXXXXX4660 Ppd”
was a BANA charge generally or a “Line Protection
Plan” charge specifically until receiving the March
2015 BANA notices.

Moreover, as a result of her impaired mental and
physical state, Mrs. Hughes was never aware of the
unauthorized charges to her bank account. Family
members began to investigate the matter and review
Mrs. Hughes’s bank statements only after BANA
issued the notice of cancellation in 2015.

Upon the death of Jane K. Hughes in June 2015,
Plaintiff Phillip Francis Luke Hughes was named as
personal representative of her estate and brought an
action against BANA on November 16, 2015, namely
for violations of TILA.

Similarly, in October 2008, Petitioner Joanne Hafter
obtained a home equity loan from BANA in the
amount of \$30,000.00, secured by a mortgage on her
home. Ms. Hafter never authorized BANA to
withdraw from her account any funds for a Line
Protection Plan or any other similar mortgage
protection plan.

Despite the absence of such authorization to be
charged for the Line Protection Plan, BANA charged
Ms. Hafter a monthly fee for this unwanted product,
beginning in October 2008 and extending through
2015. The charge was listed only as “LPP Fee
Assessment” on the monthly transaction summary
for her home equity loan. The monthly charges for

the Line Protection Plan were as small as three dollars.

The “LPP Fee Assessment” appeared on the summary as a line item between payments toward the loan’s principle and its finance charges. The statement categorized the LPP Fee Assessment as “Fees/Chgs/Ins.” Given that BANA described these transactions expressly as a “fee,” Ms. Hafter was unaware of the charge or that it represented an unwanted insurance product until she received a notice from BANA in 2015 that she would no longer be charged for the Line Protection Plan.

On March 9, 2016, BANA’s counsel sent Ms. Hafter’s counsel a partial copy of two documents, each purportedly containing Ms. Hafter’s signature, which BANA alleges authorized BANA to charge Ms. Hafter for the Line Protection Plan. Ms. Hafter did not sign either document and attested that the purported signatures were not her true signatures.

2. Procedural History

Petitioners are current or former customers of Bank of America National Association (“BANA”) that took out secured loans through the institution which Petitioners allege used their sensitive loan information to charge them, without authorization, for optional loan services expressly declined by the parties.

Plaintiff Phillip Francis Luke Hughes filed the original complaint in the Court of Common Pleas in Spartanburg County, South Carolina on November

16, 2015. Defendant thereafter removed the case from state court to the District Court of South Carolina Spartanburg Division on December 30, 2015. Plaintiff Hughes thereafter filed a Third Amended Complaint (Pet. App. 11) on March 23, 2016.

Judge Mary Geiger Lewis presided over the case. The district court's jurisdiction was founded on 28 U.S.C. § 1331 as to questions of federal law under the Truth in Lending Act, 15 U.S.C. § 1605(b), and 28 U.S.C. § 1367 as to Plaintiffs' state law claims.

On April 21, 2016, Defendant filed a motion to dismiss the Third Amended Complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs responded to Defendant's motion, and Defendant filed a reply.

The district court granted Defendant's motion to dismiss as to all of Plaintiffs' claims, holding that all claims were barred by a statute of limitations and could not be equitably tolled for fraudulent concealment because Plaintiffs failed to plead facts sufficient to establish that they exercised due diligence to discover the alleged fraud. Specifically, the district court determined that neither Plaintiff could present "any argument" that the unauthorized charges were undiscovered despite the exercise of due diligence based upon the sole fact that Plaintiffs received monthly financial statements from BANA.

Plaintiffs appealed the district court order on February 13, 2017. Plaintiffs challenged the district court's opinion on the grounds that the court failed

to properly apply the standard of review applicable to a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure by disregarding allegations by the Plaintiffs essential to a determination of equitable tolling, failed to view the factual allegations in the light most favorable to the Plaintiffs, and made an improper finding of fact. The United States Court of Appeals for the Fourth Circuit affirmed the decision and findings by the district court.

REASONS FOR GRANTING THE PETITION

1. Review by This Court is Necessary to Correct a Departure by the Lower Court from Federal Law and Precedent.

The lower court did not apply the required standard of review nor properly permit a fact finder, after discovery, to consider when Plaintiffs were on notice of BANA's illegal conduct and whether equitable tolling is appropriate. The court failed to consider all factual allegations in the pleadings as true, failed to draw inferences in the light most favorable to the Plaintiffs, and disregarded key allegations that established the proper application of equitable tolling of the statute of limitations at the pleadings stage. The lower court erred by omitting required legal inquiries germane to equitable tolling.

**a. The Lower Courts Misstated the
Test for Equitable Tolling.**

The Fourth Circuit has explained that the doctrine of equitable tolling allows a plaintiff to sue after the statute of limitations has expired in circumstances of fraudulent concealment because she was “induced or tricked by [her] adversary’s misconduct into allowing a filing deadline to pass.” *Chao v. Virginia Dep’t of Trans.*, 291 F.3d 276, 283 (4th Cir. 2002) (citing *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990)).

When this doctrine of fraudulent concealment is invoked, the statute of limitations period does not begin to run until the plaintiff discovers the fraud. *Supermarket of Marlinton Inc. v. Meadow Gold Dairies, Inc.*, 71 F.3d 119, 122 (4th Cir. 1995). To invoke the doctrine of fraudulent concealment as a ground for equitable tolling, a plaintiff must demonstrate three elements: “(1) the party pleading the statute of limitations fraudulently concealed the facts that are the basis of the plaintiff’s claims, and (2) the plaintiff failed to discover those facts within the statutory period, despite (3) the exercise of due diligence.” *Id.* (citing *Weinberger v. Retail Credit Co.*, 498 F.2d 552, 555 (4th Cir. 1974)).

The district court and the Fourth Circuit considered this test in their respective opinions, concluding that the Plaintiffs were not entitled to equitable tolling solely because the parties’ possession of financial statements reflecting charges related to the fraud, in and of itself, established a failure by the parties to exercise due diligence.

The lower courts, however, failed to consider the second component of the equitable tolling doctrine in cases of fraudulent concealment: if a plaintiff shows that she was not on actual or inquiry notice of wrongdoing, then there is nothing to provoke inquiry to trigger the party to engage in a duly diligent investigation. *Harris v. Sand Canyon Corp.*, 274 F.R.D. 556, 560–61 (D.S.C. 2010) (citing *Supermarket of Marlinton Inc.*, 71 F.3d at 128). The issue of notice is a question of “[w]hether a claimant knew or should have known that they had a cause of action” and “is a question for the jury.” *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (S.C. 1993).

Instead of allowing the parties to submit the issue of notice to a finder of fact, the district court created a de facto rule, lacking any authoritative support, that possession of financial documents containing unauthorized charges, though surreptitiously concealed within the documents, charges the consumer with notice as a matter of law.

Consideration of all of the well-plead facts and reasonable inferences drawn therefrom, in a light most favorable to the plaintiff, necessarily results in a different conclusion. The well-plead facts include that following the transaction, Mrs. Hughes underwent major heart surgery, suffered from dementia, experienced vision impairments that required eye surgery, suffered from cataracts, sustained a broken hip that required hospitalization, and was admitted to a nursing home. The well-plead facts also include that Bank of America did not notify Mrs. Hughes of the unauthorized charges

until 2015. The well-plead facts further include that BANA purposefully included the charges on the financial statements in a surreptitious and ambiguous fashion.

The well-plead facts further include that Petitioner Hafter never authorized Bank of America to withdraw any funds for the Line Protection Plan and that the charge was incorrectly identified on the monthly statements. Further, the well-plead facts include that Petitioner Hafter did not sign documents produced by Bank of America, and that she was notified of the charges until 2015. The Petitioners thus believe this matter ripe for review for reversible error.

**b. The District Court Rendered Its
Decision Under an Incorrect
Standard of Review.**

The federal standard applied to a court's review of a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure is well-established and regularly employed by our courts. The district court reviewed the case under an improper standard of review, and wrongfully dismissed Petitioners' claims at the pleadings stage. The Court of Appeals for the Fourth Circuit, by affirming the dismissal "for the reasons stated by the district court," in turn ignored long-standing precedent calling for a liberal interpretation of the pleadings for purposes deciding a 12(b)(6) motion to dismiss.

An important advantage to a plaintiff facing a motion to dismiss for failure to state a claim is that, in considering a motion to dismiss, the factual allegations in the complaint are accepted as true and are to be viewed in the light most favorable to the plaintiff; the plaintiff is further afforded the benefit of all reasonable inferences that can be drawn from those allegations. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). “[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The district court’s opinion entirely forgets these considerations, both in the recital of the standard of review and in its application.

In the case of Plaintiff Hughes, the district court boiled the relevant facts into three points that are lacking in context: 1) the Hughes declined to purchase the mortgage insurance Defendant offered them when they opened their line of credit; 2) Defendant charged them for the product from 2006 to 2015, and the charge appeared on the Hugheses’ monthly bank statement; and 3) on or about March 17, 2015, Defendant sent a notice to Hughes stating that their mortgage insurance would be cancelled on September 30, 2015. Although the court noted Ms. Hughes’s age and deteriorating mental and physical state, it incredulously decided at the pleadings stage, without the benefit of any discovery, that although suit was filed only months after Bank of America notified the Hugheses of the unauthorized charges, Plaintiffs did not satisfy the due diligence requirement.

Material facts contained in the pleading but omitted from the district court's consideration of whether Mrs. Hughes lacked notice of BANA's wrongdoing include:

- The Hugheses declined to purchase the Line Protection Plain product *in writing*, and confirmed the decision with their signatures. Those LPP charges were not identified on the Hugheses' finance charge, as required by TILA.
- In June 2006, when the transaction at issue occurred, John and Jane Hughes were age 85.
- The unauthorized charges by BANA were for a relatively nominal amount, and the transaction description of the charges were ambiguous and nondescript.
- The Hugheses' account statements listed the unauthorized transactions in a small typeface and with single spacing between the listed items.

The district court dismissed the case, holding “[t]he charge for the mortgage insurance appeared on the Hugheses’ monthly checking account statements from 2006 to 2015 . . . thus *any argument* they failed to discover the purported wrongdoing by [BANA] during this period of time, although they exercised due diligence, is bereft of any merit.” In other words, the court determined that the appearance of these charges in any capacity on Mrs. Hughes’s monthly checking statement, despite her age and other

debilitating mental and physical impairments that required hospitalization and admission to a nursing home, placed Mrs. Hughes on notice of the unauthorized charges per se.

Certainly, absent the application of this unprecedented rule and affording Mrs. Hughes the benefit of all reasonable inferences, one can reasonably infer that, in light of BANA's fraudulent conduct and Mrs. Hughes's impairments as set forth above, Mrs. Hughes was not and should not have been on notice of the charges—she literally could not see them. Consequently, it stands to reason that if Mrs. Hughes was not on notice of the fraud, she had no reason to conduct further inquiry thus satisfying the due diligence requirement of equitable tolling under *Supermarket of Marlinton Incorporated* and *Harris v. Sand Canyon Corporation* and, coupled with the application of an appropriate standard of review, Mrs. Hughes pled facts sufficient to meet the due diligence prong of the equitable tolling test.

Likewise, the district court ruled, and the Fourth Circuit upheld, that Ms. Hafter's claim must not be equitably tolled, again omitting from its consideration facts that satisfy the elements of the equitable tolling test. The district court recognized the following allegations by Ms. Hafter 1) Ms. Hafter obtained a home equity line from BANA in October 2008; 2) she never authorized BANA to withdraw any funds from her banking account to pay for mortgage insurance; and 3) BANA nonetheless charged her for the product from 2008 until 2015. The court's opinion, however, originated from a single fact: that Ms. Hafter "admits in her complaint

the charge for the insurance appeared on her home equity statement each month, from 2008 until 2015.” On that basis alone, the court ruled that Ms. Hafter could not present any argument of due diligence for purposes of invoking the doctrine of equitable tolling.

The court again failed to give weight to all well-pled allegations, instead applying its newly fashioned rule that the existence of Ms. Hafter’s home equity statement sets aside the need for further consideration, as those statements necessarily bar her right to relief because of the statute of limitations. In doing so, the district court failed to give weight to the following factual allegations supporting that Ms. Hafter did not have notice of the fraud, despite her possession of the home equity statements:

- Not only did Ms. Hafter never authorize BANA to withdraw funds for LPP or mortgage protection services, at the closing of the Hafter Mortgage, she rejected any offer of LPP or mortgage protection services.
- BANA appears to have *forged Ms. Hafter’s signature* on documents granting it authority to withdraw funds for LPP.
- The insurance charge is incorrectly and confusingly listed on the financial statements.

These contextual allegations omitted from the opinion of the district court are not only relevant to the issue of equitable tolling, but are ultimately the foundation of Ms. Hafter’s claims.

The facts that the court *did* consider were not viewed in a light most favorable to Ms. Hafter. That the district court stated in its opinion that Ms. Hafter “admits” in her complaint that “the charge for the insurance” appeared on her monthly statement shines a spotlight on the issue. Though not an untrue construction of the pleadings, the characterization of the charge listed on Ms. Hafter’s home equity statement as being “for the insurance,” coupled with the court’s swift dismissal of her due diligence argument as incredulous, implies that the statements conspicuously identified the charges as being for insurance so that Ms. Hafter was or should have been on notice of the fraudulent charges.

The lower’s court ruling is inconsistent with this Court’s holdings in *Pardus* and *Twombly*, affording Petitioners the benefit of all reasonable inferences from the allegations, and allowing the complaint to proceed even if the court felt that actual proof of the subject facts is improbable.

When the Petitioners were on notice of BANA’s reprehensible conduct and fraudulent concealment is a question for the jury, and at a minimum militates a finding for equitable tolling at the pleadings stage.

Thus, review by this Court is necessary to correct a departure by the lower court from federal law and precedent. The lower court’s dismissal resultantly sanctioned the creation of a rule of notice per se where circumstances require a fact-finding by a jury.

2. The Fourth Circuit's Decision Thwarts the Congressional Intent of the Truth in Lending Act.

The decision on appeal eviscerates the protections that Congress provided in the Truth in Lending Act to consumers susceptible to unfair billing and lending practices. It is not reasonably argued that the very affirmative acts asserted by the claimants as constituting fraudulent concealment in violation of TILA also place the consumers on notice, per se, of the fraud.

Although the Fourth Circuit has not decided the issue of whether the doctrine of equitable tolling is available in instances of TILA violations, the Courts of Appeals that have addressed the question have consistently held that TILA claims may be equitably tolled. *Barnes v. West, Inc.*, 243 F.Supp.2d 559, 561–62 (E.D. Va. 2003) (citing *Ellis v. Gen. Motors Acceptance Corp.*, 160 F.3d 703, 11th Cir. 1998,); see *Ramadan v. Chase Manhattan Corp.*, 156 F.3d 499, 505 (3rd Cir. 1998); see also *Heil v. Wells Fargo Bank, N.A.*, 298 Fed. Appx. 703, 705 (10th Cir. 2008); see also *Philibotte v. Nisource Corp. Serv. Co.*, 793 F.3d 159,163 (1st Cir. 2015); *King v. State of Cal.*, 784 F.2d 910, 914 (9th Cir. 1986) (stating “district courts . . . can evaluate specific claims of fraudulent concealment and equitable tolling to determine if the general rule would be unjust or frustrate the purpose of the Act and adjust the limitations period accordingly.”).

The Eleventh Circuit's *Ellis v. General Motors Acceptance Corporation* decision and the Sixth

Circuit's *Jones v. TransOhio Savings Association* decision are particularly instructive and persuasive. "Both decisions emphasize TILA's remedial purpose, and appropriately conclude that TILA should be construed liberally in favor of the consumer." *Barnes*, 243 F.Supp.2d at 562 (citing *Jones*, 747 F.2d at 1041; *Ellis*, 160 F.3d at 707). "In *Ellis*, the Eleventh Circuit reasoned that if equitable tolling did not apply to TILA, the 'anomalous result' would be that a 'statute designed to remediate the effects of fraud would instead reward those perpetrators who concealed their fraud long enough to time-bar their victims' remedy.'" *Barnes*, 243 F.Supp.2d at 562–63 (citing *Ellis*, 160 F.3d at 708). "[I]n *Jones*, the Sixth Circuit held that the very nature of fraudulent concealment 'serve[s] to make compliance with the limitations period imposed by Congress an impossibility.'" *Id.* at 563 (citing *Jones*, 747 F.2d at 1041).

TILA is thus properly subject to equitable tolling when, as in Petitioners' case, there has been fraudulent concealment. As the Sixth Circuit provided, "to conclude otherwise is to accede to the machinations of those who would hope to thwart Congress' purpose and the ability of the federal courts to ensure that purpose's fruition: the prevention of fraud in consumer credit transactions." *Barnes*, 243 F.Supp.2d at 563 (quoting *Jones*, 747 F.2d at 1041). Notably, proof of fraudulent concealment may include acts of concealment involved in the TILA violation itself. *Id.* (citing *Supermarket of Marlinton Inc.*, 71 F.3d at 125).

The decision by the lower court invites fraud by financial institutions in consumer credit transactions, contrary to legislative intent in enacting TILA. This is true especially for consumers like Mrs. Hughes, a senior citizen who suffered from several infirmities and cognitive deterioration. The lower courts have, in turn, created a rule that rewards financial institutions for illicit activity, as the mere placement of an ambiguous and surreptitious line item in a monthly statements would now create notice and trigger the statute of limitations. Unsuspecting borrowers such as the Petitioners are the resultant victims, deprived of recourse by BANA's subterfuge.

All citizens deserve better than ephemeral promises of safeguards for which there is no accountability. If creditors are able to withdraw undisclosed and unelected finance charges without detection for the term of the one-year statute of limitations provided for by TILA, Congressional intent is thwarted. The protection of credit consumers reverts to that which prompted enactment of TILA. Indeed, that is the situation of Petitioners complained of below.

The right to require nationally-chartered financial institutions' compliance with statute and regulations is generally an important matter of public policy. The right of consumers to trust the institutions' compliance with federally-imposed consumer protections is even more so. This case presents the Court with an opportunity to clarify the applicable standards for this important right.

CONCLUSION

The rule created by the lower courts that a financial statement containing unassuming line-item charges of unauthorized withdrawals by a financial institution—though not labeled as such—places a consumer on notice of a cause of action is lacking in authoritative support and directly contradicts the Congressional intent in enacting TILA. If the lower courts' analysis prevails, and the rule is upheld, financial institutions will be safeguarded from claims based on fraudulent activity by way of its own malfeasance. Meanwhile, consumers will relinquish trust in their fiduciaries, be required to engage in endless questioning of line-item charges, and be forced to file suit upon a mere hint of wrongdoing so as to preserve their right to bring a claim.

Wherefore, Petitioners pray that this Honorable Court grant Petitioners a writ of certiorari and afford them the proper opportunity for a decision on the merits of the issues on which the district court dismissed their Complaint, namely whether Petitioners claims under TILA are equitably tolled.

Respectfully submitted,

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