Quarterly Report Impact Analysis

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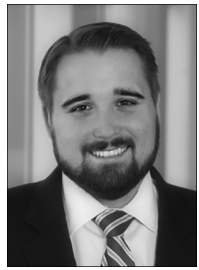
I. Introduction



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The *Quarterly Report* is the law journal of the Conference on Consumer Finance Law, a non-profit organization founded in 1926 by members of the legal profession and the financial services industry to offer educational services, publications, and research relating to consumer financial issues. The publication has made an unmistakable impact in the finance law world for decades.[1] This article seeks to highlight some of the publication's notable contributions to legal scholarship and to emphasize just how impactful the *Quarterly Report* is.

At the outset, it is important for readers to understand exactly what they should (and should not) expect from this article. The authors have by no means included an exhaustive selection of influential *Quarterly Report* articles—to do so would be a colossal undertaking. Rather, the article features only a handful of the many pieces that have garnered notable attention since being published.[2] The articles are generally organized topically, and,

1. No less than 1,650 *Quarterly Report* articles are currently available on Westlaw, and many of them have been cited frequently by courts, scholars, and litigators.
2. Some considerations included citing court level, total number of citations, and extent of article discussion in citing authority, among others.

for each article mentioned, the authors have briefly described the article's topic and contribution. We hope that you will enjoy this review and be as impressed with the quality and scope of the articles as we are.

II. Article Reviews

After providing readers with a general history and explanation of residential loan securitization, Derrick Land's article titled *Residential Mortgage Securitization and Consumer Welfare* describes the benefits of securitization to both lenders and consumers.[3] The article then provides a fairly comprehensive summary of legal challenges surrounding residential loan securitization and tax implications, and ominously predicts that further regulation of the subprime market will be implemented to prevent abuses of the securitization process.[4] Land's article was quoted extensively in two Alabama Supreme Court opinions, one of which upheld the ability of lenders to securitize loans.[5] The Alabama Supreme Court additionally utilized Land's article to highlight the benefits of securitization, before rejecting assertions that all loan transfers must be recorded to demonstrate standing to enforce the loan instrument.[6] A number of practice guides and secondary sources have also discussed the article's comprehensive description of the securitization process.

Texas once had the unique distinction of being the only state in the nation that prohibited homeowners from borrowing against equity built up in their home. This prohibition was lifted via a 1997 constitutional amendment. But, to reach a two-thirds majority consensus, the Texas State Legislature implemented several consumer protections which—if not followed—imposed the draconian penalty of leaving a lender with an unsecured, non-recourse debt. In *Pitfalls (and Pratfalls) of Texas Home Equity Lending*, J. Alton Alsup performs an exhaustive examination of the more than twenty-five conditions imposed on lenders when issuing equity loans in Texas and related regulatory developments.[7] Alsup thoroughly examines potential pitfalls and lender compliance practices, which—if not precisely followed—can lead to disastrous results. The Texas Supreme Court cited Alsup's summary of legislative analysis in a 2013 case holding certain provisions contained in the constitutional amendment were invalid.[8] Because of the article's comprehensive discussion of this constitutional amendment,

3. Derrick M. Land, *Residential Mortgage Securitization and Consumer Welfare*, 61 Consumer Fin. L.Q. Rep. 208 (2007).
4. *Id.*
5. Deutsche Bank Nat'l Tr. Co. v. Walker Cty, 292 So. 3d 317, 320 (Ala. 2019); Ex parte MERSCORP, Inc., 141 So. 3d 984, 987 (Ala. 2013).
6. *Deutsche Bank Nat'l Tr. Co.*, 292 So. 3d at 320.
7. J. Alton Alsup, *Pitfalls (and Pratfalls) of Texas Home Equity Lending*, 52 Consumer Fin. L.Q. Rep. 437 (1998).
8. Fin. Com'n of Texas v. Norwood, 418 S.W.3d 566, 571 (Tex. 2013).

it has become a frequently cited source in appellate briefs, law journal articles, and other secondary sources written on the topic that certain provisions contained in the constitutional amendment were invalid.[9]

In another of Alsup's influential works titled *The New and Improved Texas Reverse Mortgage*, he discusses the legislative changes made to Texas reverse mortgage terms in 1999.[10] Texas courts have since quoted substantial portions of this article to familiarize readers with the reverse mortgage process. For example, in April of 2020, nearly twenty years after the article's publication in 2001, it was cited by a Texas appellate court to describe the reverse mortgage process.[11] The Fourteenth Court of Appeals of Texas also cited the article in both 2015[12] and 2016[13] for that same purpose.

HAMP: An Overview of the Program and Recent Litigation Trends, authored by John Chiles and Matthew Mitchell, gives an overview of the Home Affordable Modification Program (HAMP), which was signed into law by President Obama in 2009.[14] Additionally, the article discusses the litigation initiated by those believing they were improperly denied modifications under the program.[15] Not only was the article cited in opinions from both the Fourth[16] and Seventh[17] Circuits, it was discussed more extensively in

9. *See, e.g.*, J. Alton Alsup, *Texas' New Equity Reform Amendment*, 59 Consumer Fin. L.Q. Rep. 322 (2005); J. Alton Alsup, *The New and Improved Texas Reverse Mortgage*, 55 Consumer Fin. L.Q. Rep. 207 (2001); Julia Patterson Forrester, *Home Equity Loans in Texas: Maintaining the Texas Tradition of Homestead Protection*, 55 SMU L. Rev. 157 (2002); Ann Graham, *Where Agencies, the Courts, and Legislature Collide: Ten Years of Interpreting the Texas Constitutional Provisions for Home Equity Lending*, 9 Tex. Tech. Admin. L.J. 69 (2007); Paul Hendry III, *Home Equity Lending In Texas: are Loan Origination Fees Interest?*, 10 Tex. Wesleyan L. Rev. 259 (2003); Michael K. O'Neill, *Update on Texas Equity Home Lending*, 56 Consumer Fin. L.Q. Rep. 117 (2002); Scott D. Samlin & Stephen F.J. Ornstein, *Texas Supreme Court Rules 'Discount Points' are Not Interest*, 67 Consumer Fin. L.Q. Rep. 74 (2013); Patton L. Zarate, *An Ailing System: Possible Solutions for Curing the Texas Home Equity Loan Amendment*, 31 St. Mary's L.J. 461 (2000).

10. J. Alton Alsup, *The New and Improved Texas Reverse Mortgage*, 55 Consumer Fin. L.Q. Rep. 207, 208 (2001).

11. Kressenberg v. Nationstar HECM Acquisition Tr. 2015-2, Wilmington Savs. Fund Soc'y, FSB, No. 02-18-00261-CV, 2020 WL 1808293, at *2 n.1 (Tex. App.—Fort Worth Apr. 9, 2020, no pet.).

12. Larsen v. OneWest Bank, FSB, No. 14-14-00485-CV, 2015 WL 6768722, at *4 (Tex. App.—Houston [14th Dist.] Nov. 5, 2015, no pet.).

13. Washington-Jarmon v. OneWest Bank, FSB, 513 S.W.3d 103 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

14. John R. Chiles & Matthew T. Mitchell, *HAMP: An Overview of the Program and Recent Litigation Trends*, 65 Consumer Fin. L.Q. Rep. 194, 194 (2011) (citation omitted).

15. *Id.* at 195.

16. Spaulding v. Wells Fargo Bank, 714 F.3d 769, 774 (4th Cir. 2013).

17. Wigod v. Wells Fargo Bank, 673 F.3d 547, 559 n.4 (7th Cir. 2012).

an opinion from the California Court of Appeals for the Third District.[18] In that case, the court cited the article to describe the HAMP modification process and to acknowledge the widespread skepticism about the HAMP's effectiveness, which stems from the relatively small number of individuals actually receiving modifications under the program. The article has also been cited in five federal appellants' briefs,[19] eight law review articles,[20] and one amicus curiae brief submitted to the Supreme Court of Minnesota.[21]

Beginning in 1994, the disclosure requirements contained in the Real Estate Settlement Procedures Act (RESPA) were vastly expanded to require that equity lenders provide extensive disclosures when providing loans secured by subordinate liens, as well as dealer loans.[22] Leonard Bernstein published an article that same year focusing on revisions and expansions made to Regulation X and Regulation Z, and outlined required equity lender transaction disclosures under these expansions.[23] The article then explored the practical impacts of RESPA's prohibitions on referral fees and

18. Bushell v. JPMorgan Chase Bank, 220 Cal. App. 4th 915, 163 Cal. Rptr. 3d 539 (2013).

19. Appellant's Opening Brief at 4, Curley v. Wells Fargo & Co., 692 Fed. App'x. 900 (9th Cir. 2017) (No. 15-16695); Appellant's Brief on Appeal at 14, Federal Home Loan Mortg. Corp. v. Gaines, 589 Fed. App'x. 314 (6th Cir. 2014) (No. 13-1249); Appellant's Brief on Appeal at 25–26, Acheampong v. Bank of New York Mellon, 531 Fed. App'x. 751 (6th Cir. 2013) (No. 13-1145); Appellant's Brief on Appeal at 21, Goss v. ABN AMRO Mortg. Group, 549 Fed. App'x. 466 (6th Cir. 2013) (No. 12-2627); Appellant's Brief on Appeal at 25, El-Seblani v. IndyMac Mortg. Servs., 510 Fed. App'x. 425 (6th Cir. 2013) (No. 12-1046).

20. W. Daniel Bahls, *Splitting the Baby: Avoiding Foreclosure When Homeowners Have Uncertain or Conflicting Interests*, 36 W. New. Eng. L. Rev. 261, 265 n.23 (2014); John Campbell, *Where Kafka Reigns: A Call for Metamorphosis in Unlawful Detainer Law*, 49 U. Mich. J. L. Reform 557, 565 n.28 (2016); Justin Jacobs, *Help of HAMP(er)?-The Courts' Reluctance to Provide the Right to a Private Action under HAMP and its Detrimental Effect on Homeowners*, 47 Val. U. L. Rev. 267, 268 n.9 (2012); Amanda Martin, *Litigating Consumer Protection Acts in the HAMP Context*, 38 Seattle U. L. Rev. 739 (2015); Arsen Sarapinian, *Fighting Foreclosure: Using Contract Law to Enforce the Home Affordable Modification Program (HAMP)*, 64 Hastings L.J. 905, 908 n.16 (2013); Cushla E. Talbut, *Hampered Hopes for Homeowners: An Analysis of How Litigation Trends Have Exposed the Home Affordable Modification Program's Weaknesses*, 68 Miami L. Rev. 295 (2013); Byron Tuyay, Corvello v. Wells Fargo Bank*: Lending Support for a New Generation of HAMP Litigation and Mortgage Relief*, 47 Loy. L.A. L. Rev. 981, 990 n.77, 991 n.78–81 (2014); Kelly Volkar, *The TPP & Its Broken Promises*, 47 U.C. Davis L. Rev. 1417, 1419 n.15 (2014).

21. Brief of Amicus Curiae the University of Minnesota Law School Consumer Protection Clinic at 11, Gretsch v. Vantium Capital, Inc., 846 N.W.2d 424 (Minn. 2014) (No. A12-2270).

22. Leonard A. Bernstein, *RESPA Invades Home Equity, Home Improvement and Mobile Home Financing*, 48 Consumer Fin. L.Q. Rep. 194 (1994).

23. *Id*.

the requirements when lenders offer controlled business arrangements.[24] Finally, Bernstein discussed Good Faith Estimates in the context of equity lending, and why some of RESPA's expanded requirements are problematic.[25] Bernstein's article was cited by the Eleventh Circuit Court of Appeals in its analysis of whether RESPA outlawed payment of yield spread premiums.[26]

In *Testing Materiality Under the Unfair Practices Acts: What Information Matters When Collecting Time-Barred Debts?*, Timothy Goldsmith and Nathalie Martin argue the enforceability of a debt, specifically, whether collection is time-barred or not, is material information that should be disclosed to debtors in debt collection letters.[27] To support this argument, Goldsmith and Martin discuss an empirical study, which found that debtors respond differently when debt collection letters disclose such information.[28] In 2013, the Federal Trade Commission (FTC) released a report citing to the article as support for its conclusion that the time-barred nature of a debt should be disclosed to avoid misleading the debtor.[29] The article has also been cited by the Sixth Circuit[30] and federal district courts in both Illinois[31] and Texas.[32]

Drafted on the heels of the enactment of the Fair Credit Reporting Act (FCRA) in September 1997, *The New Fair Credit Reporting Act—New Duties; New Liability; New Questions* performs a comprehensive summary of FCRA's new requirements and explores the numerous ambiguities contained therein.[33] It also discusses administrative interpretations of FCRA's indefinite terms, outlines best practices to ensure compliance with FCRA provisions, and discusses potential liability for FCRA violations. The article was cited by the Seventh Circuit Court of Appeals in its discussions of the "catch-all" provision in FCRA's definition of "adverse actions."[34] It was also subsequently cited by a number of secondary sources.[35]

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24. *Id.*
25. *Id.*
26. Culpepper v. Inland Mortg. Corp., 132 F.3d 692, 695 (11th Cir. 1998).
27. Timothy E. Goldsmith & Nathalie Martin, *Testing Materiality Under the Unfair Practices Acts: What Information Matters When Collecting Time-Barred Debts?*, 64 Consumer Fin. L.Q. Rep. 372 (2010).
28. *Id.* at 373.
29. *The Structure and Practices of the Debt Buying Industry*, F.T.C. 2013 WL 419348 (2013).
30. Buchanan v. Northland Grp., Inc., 776 F.3d 393, 396 (6th Cir. 2015).
31. Delgado v. Capital Mgmt Servs. LP, No. 4:12-cv-4057-SLD-JAG, 2013 WL 1194708, at *4 (C.D. Ill. Mar. 22, 2013).
32. Carter v. First Nat'l Collection Bureau, Inc., 135 F. Supp. 3d 565, 574 (S.D. Tex. 2015).
33. Anne P. Fortney & Linda B. Dubnow, *The New Fair Credit Reporting Act—New Duties; New Liability; New Questions*, 52 Consumer Fin. L.Q. Rep. 17 (1998).
34. Treadway v. Gateway Chevrolet Oldsmobile Inc., 362 F.3d 971, 982 (7th Cir. 2004).

In *Enforcement of Security Interests in Motor Vehicles in Bankruptcy: The Rash to Judgment—A Contrarian View from the Creditor's Perspective*, Michael Dunagan covers the challenges facing secured creditors, specifically, motor vehicle lien holders, in Chapter 13 bankruptcy filings.[36] Dunagan also suggests some ways creditors can combat those challenges.[37] The article has been seriously influential in the field. Most notably, the late Justice Scalia cited the article in a four-justice dissent in 2004.[38] Scalia wrote, "[i]t does not strike me as plausible that creditors would *prefer* to lend to individuals already in bankruptcy than to those for whom bankruptcy is merely a possibility—as if Chapter 13 were widely viewed by secured creditors as some sort of godsend."[39] In classic Scalia fashion, he then cited Dunagan's article with a "*Cf*" signal to prove that, in fact, Chapter 13 is the exact opposite of a "godsend" for creditors.[40] The article has also been cited in twelve scholarly articles published between 1999 and 2014.[41]

35. Jacqueline S. Akins, *Fair Credit Reporting—A New Look*, 52 Consumer Fin. L.Q. Rep. 324 (1998); Jon Ann Giblin & Alvin C. Harrell, *Consumer Bankruptcy Developments*, 57 Bus. Law. 1333 (2002); Alvin C. Harrell, *Subprime Lending Developments With Impacts For Creditors And Consumers*, 52 Consumer Fin. L.Q. Rep. 238 (1998); Gregory K. Merryman & Sheldon Feldman, *The Meaning Of Adverse Action Under FCRA*, 53 Consumer Fin. L.Q. Rep. 147 (1999); Andrew M. Smith & Peter Gilibert, *Fair Credit Reporting Act Update—2012*, 68 Bus. Law. 593 (2013).

36. Michael W. Dunagan, *Enforcement of Security Interests in Motor Vehicles in Bankruptcy: The Rash to Judgment—A Contrarian View from the Creditor's Perspective*, 52 Consumer Fin. L.Q. Rep. 191 (1998).

37. *Id*. at 195–96.

38. Till v. SCS Credit Corp., 541 U.S. 465, 494 (2004).

39. *Id*. (emphasis in original).

40. Michael W. Dunagan, *Enforcement of Security Interests in Motor Vehicles in Bankruptcy: The Rash to Judgment—A Contrarian View from the Creditor's Perspective*, 52 Consumer Fin. L.Q. Rep. 191 (1998) ("[T]he Chapter 13 system is stacked against the auto lender . . . .").

41. Michael W. Dunagan, *Chapter 13 and the Sub-Prime Car Creditor*, 63 Consumer Fin. L.Q. Rep. 59 (2009); Michael W. Dunagan, *The Impact of Chapter 13 Bankruptcies on Car Creditors*, 59 Consumer Fin. L.Q. Rep. 172 (2005); Jon Ann Giblin et al., *The 2005 Bankruptcy Reform Act*, 61 Bus. Law. 949 (2006); Jon Ann Giblin, *Current Issues and Recent Developments in Consumer Bankruptcies*, 58 Consumer Fin. L.Q. Rep. 99 (2004); Jon Ann Giblin & Alvin C. Harrell, *Current Issues and Recent Developments in Consumer Bankruptcies*, 55 Bus. Law. 1467 (2000); Alvin C. Harrell, *2011–2013 Secured Transactions Review*, 68 Consumer Fin. L.Q. Rep. 157 (2014); Alvin C. Harrell & Fred H. Miller, *Selected Update-UCC Article 9*, 53 Consumer Fin. L.Q. Rep. 248 (1999); Gary D. Hammond et al., *Selected Issues and Developments in Consumer Bankruptcy, and the Impact of the 2005 Bankruptcy Code Amendments*, 59 Consumer Fin. L.Q. Rep. 398 (2005); Maya P. Hill & Thomas A. Hill, *Bankruptcy Code Section 1325: 910 Creditor Claims in the Post-BAPCPA Environment*, 61 Consumer Fin. L.Q. Rep. 587 (2007); David A. Lander, *Essay: A Snapshot of Two Systems that are Trying to Help People in*

Some Surprising New (and Old) Perspectives on Check-Kiting, authored by Alvin Harrell, discusses the imprecise nature of the term "check-kiting."[42] It also points out check-kiting does not necessarily amount to illegal activity—such as when the term is used simply to refer to writing checks without sufficient supporting funds.[43] The Sixth Circuit agreed with the article's conclusion that the term "check-kiting" is imprecise when the court cited the article in 2015.[44]

Harrell also authored *The New UCC Articles 3 and 4: Impact on Banking Operations* alongside Fred Miller.[45] This article covers the revisions made to Articles 3 and 4 of the Uniform Commercial Code (UCC) in 1990.[46] In 1997, the New Jersey Superior Court, Appellate Division, quoted the article in support of its holding that a money order is to be treated as a personal rather than cashier's check under the UCC.[47] More recently, in January of 2014, the article was cited in an appellant's brief submitted to the Supreme Court of Alabama.[48] The article has also been cited in thirteen law review articles over a twenty-year period running from 1993 to 2013.[49] Its influence

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Financial Trouble, 7 Am. Bankr. Inst. L. Rev. 161 (1999); David B. McCrea & Alvin C. Harrell, *Overview and Update on Vehicle Secured Transactions, Certificates of Title, and Related Issues*, 64 Consumer Fin. L.Q. Rep. 342 (2010); Lawrence A. Young & Heather H. McIntyre, *Toto Part II . . . We're Still Not in Kansas Anymore—After Discharge, What Can a Secured Creditor Do? (With Apologies to Quentin Tarrantino)*, 60 Consumer Fin. L.Q. Rep. 272 (2006).

42. Alvin C. Harrell, *Some Surprising New (and Old) Perspectives on Check-Kiting*, 57 Consumer Fin. L.Q. Rep. 214, 214–15 (2003).

43. *Id.* at 222.

44. United States v. Vysniauskas, 593 Fed. App'x. 518, 523 (6th Cir. 2015).

45. Alvin C. Harrell & Fred H. Miller, *The New UCC Articles 3 and 4: Impact on Banking Operations*, 47 Consumer Fin. L.Q. Rep. 283 (1993).

46. *Id.*

47. Trump Plaza Assocs. v. Haas, 692 A.2d 86, 90 (N.J. Super. Ct. App. Div. 1997).

48. Brief of Appellant at 29, Troy Bank and Trust Co. v. Citizens Bank, 166 So. 3d 57 (Ala. 2014) (No. 1130040).

49. M. H. Cersonsky, *Deposit Agreements Between Banks and Their Customers—A Wall of Protection or a Wall with a False Foundation?*, 31Tex. Tech L. Rev. 1, 13 nn.80–81 (2000); Clark C. Johnson & Tonie M. Franzese-Damron, *Uniform Commercial Code Revised Article 3 and Amended Article 4: How Michigan Law Might Change*, 74 Mich. B.J. 538, 538 n.3 (1995); A. Brooke Overby, *Check Fraud in the Courts After the Revisions to U.C.C. Articles 3 and 4*, 57 Ala. L. Rev. 351, 355 n.34 (2005); Melissa Waite, *Check Fraud and the Common Law: At the Intersection of Negligence and the Uniform Commercial Code*, 54 B.C. L. Rev. 2205, 2221 n.130 (2013); Rochelle L. Wilcox, *Ordinary Care Under the Code: A Look at the Evolving Standard of Bank Liability Under U.C.C. 4-406*, 1997 Utah L. Rev. 933, 940 n.44 (1997); Virginia Wilson, *The Law of Negotiable Instruments, Bank Deposits, and Collections in Tennessee: A Survey of Changes in the 1990 Revisions to UCC Articles 3 and 4*, 28 U. Mem. L. Rev. 117 (1997); Timothy R. Zinnecker, *A Literalist Proposes Four Modest Revisions to U.C.C. Article 3*, 32 U. Rich. L. Rev. 63, 93 n.154 (1998).

has been geographically widespread, as it has been cited in seven separate scholarly publications out of seven different states.

In *Security Interests in Deposit Accounts and Certificates of Deposit Under Revised UCC Article 9*, Ben Carpenter focuses on recent revisions made to Uniform Commercial Code Article 9 in 2001.[50] Prior to these revisions, Article 9 excluded deposit accounts as original collateral for non-consumer transactions.[51] This article discusses the various implications of these revisions, specific exemptions to the changed rules, the clarity these revisions provide, and points needing further clarification in future revisions.[52] Carpenter's article was relied upon by the First Circuit Bankruptcy Panel in: (1) interpreting the 2001 revisions to Article 9 to permit use of a deposit account as collateral in commercial transactions; and (2) holding that "to perfect a security interest in a deposit account given as original collateral in a commercial transaction, under Revised Article 9, the secured party must obtain 'control.'"[53] The Maine Supreme Court quoted Carpenter's article before "conclud[ing] that the remedies provided in [UCC] section 9-1610 are not available to a secured creditor without control."[54] To reach its holding that a lender's rights to a credit deposit account were superior to those of writs of attachment, the Rhode Island Supreme Court cited the article in finding that such accounts are considered a "perfected security interest" under Article 9.[55] Carpenter was additionally cited by several law review articles examining the effects of these Article 9 revisions.[56]

Actual Damages Under the TILA: Collapsing Class Actions performs a historic and comprehensive analysis of federal circuit cases analyzing why "actual damages" are generally unavailable in Truth in Lending Act (TILA) class action suits.[57] Most importantly, recovery of actual damages requires individualized proof of injury and actual reliance, making class action suits an inappropriate forum.[58] This is particularly true since most TILA violations are technical in nature: "actual damages" are often based on specu-

50. Ben Carpenter, *Security Interests in Deposit Accounts and Certificates of Deposit Under Revised UCC Article 9*, 55 Consumer Fin. L.Q. Rep. 133 (2001).
51. *Id*.
52. *Id*.
53. Wiscovitch-Rentas v. Banco Popular De P.R. (*In re* Rivera), 600 B.R. 132, 148 (B.A.P. 1st Cir. 2019).
54. Davis Forestry Prods, Inc. v. DownEast Power Co., 2011 ME 10, ¶ 23, 12 A.3d 1180, 1187–88 (2011).
55. McFarland v. Brier, 850 A.2d 965, 974 (R.I. 2004).
56. *See, e.g.*, Xuan-Thao N. Nguyen, *Collateralizing Privacy*, 78 Tulane L. Rev. 553 (2004); Eric Bradley Robinson, *Revised Article 9 And Idaho's Variations: Where's The Love For Idaho Consumers?*, 40 Idaho L. Rev. 257 (2003); William H. Widen, *Lord of the Liens: Towards Greater Efficiency in Secured Syndicated Lending*, 25 Cardozo L. Rev. 1577 (2004).
57. Eugene J. Kelley, Jr. & John L. Ropiequet, *Actual Damages Under the TILA: Collapsing Class Actions*, 55 Consumer L.Q. Rep. 200 (2001).
58. *Id*.

lation that borrowers would obtain more favorable loans from competitors had the proper disclosures been made.[59] As a result, determining these injuries on a class-wide basis is extremely impractical.[60] The Third Circuit Court of Appeals cited Kelley and Ropiequet's article to discuss how proving "detrimental reliance may create obstacles for class certification because of the individualized fact-specific nature of the reliance inquiry."[61] The article was subsequently cited by numerous law review articles,[62] TILA practice guides,[63] and other CCFLQ articles.[64]

Lawrence Young and Jeffrey Coulter comprehensively describe various defense tactics available in Fair Debt Collection Practices Act (FDCPA) class action suits in *Class Action Strategies in FDCPA Litigation*.[65] The article outlines specific requirements under Rule 26,[66] provides guideposts for defense counsel when confronted with FDCPA suits, and cites circumstances where class certification requests have been denied.[67] The article then articulates additional potential defensive tactics, such as filing compulsory counter-claims to destroy class commonality by requiring individualized defenses.[68] Finally, Young and Coulter focus on potential issues to consider

59. *Id*.
60. *Id*.
61. Vallies v. Sky Bank, 591 F.3d 152, 158 (3d Cir. 2009).
62. Debra Lyn Bassett, *When Reform Is Not Enough: Assuring More Than Merely 'Adequate' Representation in Class Actions*, 38 Ga. L. Rev. 927 (2004); Blaine Evarson, *Due Process In Statutory Damages*, 3 Geo. J.L. & Pub. Pol'y 601 (2005); Patrick L. Hayes, *A Noose Around The Neck: Preventing Abusive Payday Lending Practices and Promoting Lower Cost Alternatives*, 35 Wm. Mitchell L. Rev. 1134 (2009); Aridle L. Katzman, *A Round Peg for A Square Hole: The Mismatch Between Subprime Borrowers and Federal Mortgage Remedies*, 21 Cardozo L. Rev. 497 (2009); John L. Ropiequet, *Assessing the Impact of* Walmart Stores, Inc. v. Dukes *On Fair Lending Litigation*, 21 J. Affordable Housing & Community Dev. L. 195 (2012).
63. Marjorie Weingert, *Causes of Action Against Payday Loan Creditors for Violating Disclosure Requirements of the Federal Truth in Lending Act*, 26 Causes of Action 2d 409 (2004) at § 42.
64. Peter N. Cubita, *The Evolution of the TILA Actual Damages Standard*, 57 Consumer Fin. L.Q. Rep. 197 (2003); John L. Ropiequet, *TILA Rescission Class Actions Strike Out*, 63 Consumer Fin. L.Q. Rep. 4 (2009); John L. Ropiequet & Katelyn R. Letizia, *Current Issues Under Electronic Transfer Fund Transfer Act in ATM Litigation*, 65 Consumer Fin. L.Q. Rep. 423 (2011); John L. Ropiequet & Eugene J. Kelley, Jr., *Usury Strikes Back: Recent Developments Under the Illinois Interest Act*, 59 Consumer Fin. L.Q. Rep. 118 (2005); John L. Ropiequet & Nathan O. Lundby, *APR Split Class Actions Under the Equal Credit Opportunity Act: The End of History?*, 61 Consumer Fin. L.Q. Rep. 49 (2007).
65. Lawrence A. Young & Jeffrey D. Coulter, *Class Action Strategies in FDCPA Litigation*, 52 Consumer Fin. L.Q. Rep. 61 (1998).
66. Fed. R. Civ. P. 26.
67. Lawrence A. Young & Jeffrey D. Coulter, *Class Action Strategies in FDCPA Litigation*, 52 Consumer Fin. L.Q. Rep. 61 (1998).
68. *Id*.

when formulating settlement strategies in a post-*Amchem Products, Inc. v. Windsor* framework.[69] The article was quoted by the Seventh Circuit Court of Appeals and at least one district court in their analysis of why recovery of attorney fees have resulted in, often frivolous, FDCPA claims becoming a "breeding ground" for class action suits.[70] Young and Coulter's analysis has been frequently cited by counsel in trial briefs filed in opposition to motions for class certification.

III. Conclusion

As is apparent, *Quarterly Report* articles are of interest to legal professionals of all sorts and at all levels. And while this article features a number of impressive articles, it is worth (re)mentioning that it merely offers a sampling of influential articles that have been published in the *Quarterly Report* over the years.

69. *Id.*
70. Sanders v. Jackson, 209 F.3d 998, 1003 (7th Cir. 2000); Seeger v. AID Associates, Inc., 05-C-944, 2007 WL 1029528 (E.D. Wisc. Mar. 29, 2007).