Timeshares: Lawsuits Filed Against Wyndham May Suggest Pattern of Aggressive Sales Practices Targeting Elderly

Litigation Update

Wyndham to potentially settle multiple lawsuits regarding improper sales practices. Over the last several years, numerous lawsuits have been filed against Wyndham in Tennessee state and federal court alleging that the company targets the elderly with high pressure and misleading sales practices designed to induce them to upgrade, trade or purchase timeshares and/or points.

According to a source familiar with some of the litigation, Wyndham agreed to participate in mediation for 22 cases (4 in federal court and 18 in state court), which has resulted in proposed settlement agreements to resolve the litigation. Although our source could not comment on the terms of the settlements, the fact the Wyndham has elected not to litigate the matters is significant because plaintiffs have historically had difficulty obtaining judicial relief in cases alleging improper sales practices.

In this article we review some of the common allegations in the Tennessee litigation and also highlight a putative class action in California involving substantially similar claims. In our view, there are several key takeaways from the Wyndham litigation in Tennessee and California:

- There are a couple of factors that could have potentially motivated Wyndham to elect to participate in mediation rather than litigate. The first factor to consider is the potential bad optics of numerous cases alleging substantially similar sales practice issues resulting in elderly couples engaging in multiple costly transactions. A second, and related factor, is that many of the cases were filed in or around the time that a Tennessee jury ruled in favor of a couple alleging that they were induced into purchasing a timeshare based on combination of high pressure sales tactics and false promises by Westgate sales personnel.

- The facts alleged in the Crooks case lend further credence to the notion that Wyndham may be engaging in a pattern and practice (as opposed of isolated incidents) of targeting the elderly with aggressive sales practices.

- The numerous purchases, trade-ins and upgrades, detailed in the complaints and highlighted above, beg the question whether Wyndham’s high percentage of sales to existing customers is based upon similar transaction patterns with respect to other customers. If so, the next logical question is to what degree can the company realistically be expected to continue to rely on existing owners entering into multiple transactions for sums equal to or exceeding the price of their initial purchase.

- To the extent that news of the Tennessee settlements spreads to members of the timeshare community, it could potentially prompt other aggrieved owners to seek legal redress.

Owners lured into attending mandatory “update meetings.” Plaintiffs were allegedly informed that they were required to attend a short owner’s update meeting. Wyndham personnel allegedly employed several tactics to induce plaintiffs to attend the meetings including conditioning receipt of a parking pass on attendance as well as claiming that the purpose of the meetings was merely to discuss various new amenities. However, the meetings actually turned out to be lengthy sales presentations that generally lasted between 2.5 and 4 hours.
During the meetings Wyndham sales personnel allegedly utilized a combination of high pressure and “bait and switch” tactics to induce purchases. For example, in order to create a false sense of urgency, sales personnel indicated that the special offer being pitched was only valid that day and if plaintiffs declined the offer, they would be prohibited in the future from participating in the special offer.

A second tactic cited in Brock v. Wyndham et. al (No. 14C3263) mirrors a sales strategy described in our August 14th article regarding Diamond’s efforts to convert legacy Monarch owners: “Defendants told Plaintiffs they should have received a letter in the mail about the new CWA program, but the time period for enrollment had expired. Defendants then stated that, according to their computer records, Plaintiffs had already been presented the CWA offer and they had declined. Plaintiffs stated they had never heard of CWA and never accepted or declined anything related to it. Defendants acted astonished that Plaintiffs would decline this offer and instead that it must have been a mistake. For this reason, Defendants had to get management approval for Plaintiffs to even be considered for this program.”

**Frequently Cited Misrepresentations**

The complaints also cited a variety of alleged misrepresentations made by Wyndham sales personnel during the update meetings including:

- **Sound financial investments.** Wyndham sales reps stated that the purchases or upgrades were sound financial investment because they: (1) involved “prime real estate” that would appreciate in value over time; (2) the proposed purchases or upgrades were more valuable than plaintiffs’ previous purchases; and (3) the property carried a “right of refusal,” which meant Wyndham would repurchase the property at a future date for the current cost and potentially at a higher cost if plaintiffs held the property for a long enough period of time.

- **Deeded property interest being phased out.** In order to induce plaintiffs to participate in Wyndham’s points based membership program, sales reps frequently indicated that plaintiffs’ deeded timeshare interests were being phased out and as a result they would no longer be able to use them unless they joined the points program.

- **Reduced maintenance fees.** Many plaintiffs were told that their maintenance fees were about to increase, and the purchase in question would result in lower the maintenance fees.

- **Refinance options.** Wyndham sales reps claimed that plaintiffs could refinance their timeshare or membership points at a bank or other financial institution for a much lower interest rate. In a November 2012 letter to the CFPB, ARDA explained that “Shopping for loans is non-existent because practically all loans are purchase money loans offered by the timeshare developer that is selling the timeshare interest. There is no direct lending market to timeshare buyers” (emphasis ours). In a number of complaints, plaintiffs indicated that they were unable to find a financial institution willing to refinance their timeshare or points.

- **Rental Income.** Plaintiffs were told that they would be able to rent their timeshare points for a price sufficient to cover maintenance fees and potentially even make a profit. Additionally, Wyndham sales reps
also allegedly represented that plaintiffs would be assigned personal advisors who would provide assistance with respect to using and renting out their timeshares. However, plaintiffs were never actually able to get into contact with the individuals identified as their personal advisors.

- **Inability to conduct a meaningful review of disclosure documents.** Plaintiffs also alleged that they were not provided with adequate time to review the timeshare contracts and other disclosure materials and were prohibited from retaining copies of marketing and sales materials used during the presentations. As a result, plaintiffs did not discover certain material facts relating to the transaction until a later point, including the actual size or their down payments, which were often purchased through “Bill Me Later” accounts.

**Purchase Terms Associated with Three Complaints**

The complaints detail numerous instances of owners engaging in numerous purchase, trade-in and upgrades as a result of the aforementioned sales practices. In an effort to illustrate the cost associated with the various transactions, below we lay out some of the purchase terms associated with three complaints.


10/24/11 transaction
- Purchase price: $40,298
- Down payment: $14,511.79 – of which $110.08 paid in cash; $14,401.71 via equity trade of existing timeshare contract.
- Wyndham Financing: $26,135.21 at 13.93% over 120 months
- Fees: $349 (maintenance), $481.70 (settlement)

11/20/12 transaction
- Purchase price: $65,614
- Down payment: $27,863.95 – of which $16,076.58 via equity trade; $11,787.37 via Bill Me Later
- Wyndham financing: $38,129.05 at 12.52% over 120 months
- Fees: $349 (processing), $30 (closing)

**Brock v. Wyndham Worldwide Operations, Inc. et al, No. 14C3263 (Tenn. filed on Aug 7, 2014).** Brock owned 759,000 timeshare or club points and purchased at least 6 timeshares over a six-year period. Prior to December 21, 2012, Brock entered into 4 contracts for deeded timeshare interests (represented 500,000 points).

12/21/12 transaction
- Purchase price: $90,597
- Payment method: $61,897 via equity trade; $29,079 via two new credit cards and Bill Me Later
- Fees: $349 (processing), $30 (settlement)

10/10/13 transaction
- Purchase price: $15,300
- Payment method: $11,000 via Bill Me Later; $4,300 via personal credit card
Fees: $349 (processing), $216.35 (settlement)


10/6/09 transaction
- Purchase price: $59,622
- Down payment: $50,945 - of which 41,247 was via equity trade of an existing time share contract and $9,404 was put on a MasterCard opened in Bennett’s name
- Wyndham Financing: $9,375 at 11.49% over 120 months
- Fees: $349 (processing)

10/4/10 transaction
- Purchase price: $18,400 ($20,000 - $1,600 discount)
- Down payment: $4,860 (via Bill Me Later)
- Wyndham Financing: $14,061 at 15.99% over 120 months
- Fees: $349 (processing), $173.30 (settlement)

10/8/11 transaction
- Net purchase price: $88,271 ($130,700 - $42,429)
- Down payment: $72,604.55 – of which $59,971 via equity trade of existing timeshare contract, $5,000 put on Bill Me Know plan, and $7,716.86 put on new Visa opened in Bennett’s name
- Wyndham Financing: $16,364.45 at 11.49% over 120 months
- Fees: $349 (processing), $432.30 (settlement)

4/23/12 transaction
- Purchase price: $17,700
- Down payment: $10,011.10 (via Visa card in Bennett’s name)
- Wyndham Financing: $8,067.70 at 12.99% over 120 months
- Fees: $349 (processing), $30 (settlement)

Putative class action arbitration in California against Wyndham also alleges improper sales techniques targeting the elderly. In Crooks v. Wyndham Vacation Ownership, Inc. et al. (No. 13-CV-03669-WHO), an elderly California couple sued Wyndham alleging that the company’s “employees were targeting senior citizens to sell them timeshares they could not afford and deceiving them about their ability to have their timeshares bought back.” Among other things, the Crooks alleged that they were deceived into purchasing additional points, when they believed they were simply restructuring their existing points in order to obtain a lower interest rate. They also alleged that they were induced to purchase additional points based on the false promise that it would make them eligible for a guaranteed buy-back program. Many of the other alleged misrepresentations laid out in the complaint bear resemblance to the claims asserted in the various Tennessee cases.

The case was initially filed in California State Court on November 16, 2012, but was subsequently removed to federal court in August of 2013. Shortly after the case was removed to federal court, Wyndham moved to compel arbitration and to stay all other proceedings pending arbitration. The Crooks filed an arbitration demand in February
and shortly thereafter requested that the arbitration include class relief. In response, Wyndham filed a motion in federal court seeking among other things an order deny class arbitration. On July 20th, district court judge William Orrick denied Wyndham’s motion holding that the issue of whether class arbitration is available is for the arbitrator to decide.

**Issue Snapshot**

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<td><strong>Most Compelling Narrative</strong></td>
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<td>The timeshare industry has historically been plagued by consumer complaints related to aggressive sales practices, high fees and inability to use timeshares points as advertised. Further, financing and underwriting standards may lead to consumers taking on loans they cannot afford to pay for timeshares, putting additional pressure on recovery and debt collection practices, which are a high priority for the CFPB.</td>
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**Legal & Market Factor Analysis**

- Lending, debt collection and financial advisory subject the industry to CFPB investigatory and UDAAP authority.

- High interest rates and a fast acceptance process may induce consumers to take on financing they cannot afford, inviting additional scrutiny.

- Industry-wide shift from interval to points-based system heightens the risk of aggressive recovery practices across industry.

- The way timeshare defaults are reported to credit bureaus makes it more difficult for consumers to obtain credit.

- In particular, Diamond’s inventory recapture model results in customer churn and incentivizes aggressive recovery practices.

- A slow but growing number of regulatory and litigation developments may lead to increased scrutiny of the industry:

In July 2014, the NYAG obtained a preliminary injunction halting further sales and foreclosures by Manhattan Club. The litigation is still in progress, but the investigation to date has revealed a number of troubling sales practices and the potential effectiveness of undercover investigation techniques.

- The high volume of consumer complaints has not translated to formal complaints with regulators. There are few complaints against the biggest industry players in the CFPB database.

- Industry move from deeded interest to points system makes regulatory status of product itself less clear.

- Default rates among consumer borrowers are still relatively low, according to company filings.
On October 14, 2014, the NYAG reached an agreement with Hilton pursuant to which Hilton “agreed to stop using a clause in its timeshare purchase agreement that disclaimed liability for specific representations made by salespeople, particularly regarding the availability or reservations, hotel use rights, and the rental, resale, and buybacks of timeshare interests.”

On May 19th, an arbitrator ordered Diamond Resorts to refund a couple that were legacy Monarch owners $42,460 in connection with alleged misrepresentations during an upgrade sales pitch.

On May 29th, Wyndham, entered into a settlement with the Wisconsin Department of Agriculture, Trade and Consumer Protection that required the company to pay over $665,000 in restitution to 29 consumers who purchased timeshare contracts between 2008 and 2013. The settlement came as a result of a DATCP investigation of consumer complaints alleging unfair trade practices.

In June, the Tennessee Supreme Court upheld a $600,000 judgment by the Tennessee Court of Appeals against Westgate Resorts in a case that involved alleged high-pressure sales techniques and misrepresentations.

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<td>-Dodd-Frank Section 1042 also gives state regulators ability to bring UDAAP actions against financial service providers.</td>
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<td>-Possibility of 100% financing for interests in real property may be reminiscent of high-risk mortgage financing.</td>
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<td>-Policymakers may see less urgency in going after an industry focused on discretionary and leisure spending.</td>
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<td>-Consumer advocacy groups are currently focused on higher-profile issues at the CFPB, including an upcoming small-dollar loan rule.</td>
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