

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
KANSAS CITY**

BRENT M. KRAUSE and )  
JILL KRAUSE, )  
INDIVIDUALLY AND AS CLASS )  
REPRESENTATIVES )  
Plaintiffs, )  
vs. )  
CHICAGO TITLE INSURANCE )  
COMPANY, )  
and )  
AFFINITY LENDING GROUP, INC., )  
Defendants )

Case No. 0516-CV30246  
Division 3

**FILED-CIRCUIT COURT  
JACKSON CO., MO-KC**  
06 SEP 12 PM 1:19

**FIRST AMENDED PETITION FOR INDIVIDUAL AND CLASS ACTION RELIEF**

Plaintiffs, Brent M. Krause and Jill Krause (jointly referred to hereinafter as “the Krauses”), pursuant to Rule 52.08 of the Missouri Rules of Civil procedure, each on their own behalf and as representatives of classes of individuals as more fully described below, for their First Amended Petition against defendants Chicago Title Insurance Company (hereinafter referred to as “Chicago”) and Affinity Lending Group, Inc. (hereinafter referred to as “Affinity”), state and allege as follows:

**PARTIES**

1. Affinity is a Missouri corporation with its principal place of business at 338 SW Main Street, Lee’s Summit, Jackson County, Missouri. Affinity is in the business of making, brokering or otherwise participating in real estate loans to Missouri residents in the State of Missouri.

2. Chicago is a Missouri corporation with its principal place of business at 171 North Clark Street, 8<sup>th</sup> Floor, Chicago, Illinois. Chicago, on its own behalf and through its agents, is in the business of closing, insuring title, or otherwise participating in real estate loans to Missouri residents in the State of Missouri.

3. Brent M. Krause is a citizen of Missouri and resides at 1134 Glenview Avenue, Jackson County, Missouri.

4. Jill Krause is a citizen of Missouri and resides at 1134 Glenview Avenue, Jackson County, Missouri.

#### **GENERAL ALLEGATIONS**

5. Affinity and Chicago, on their own behalf and through their agents, have for at least the past five years participated in real estate transactions involving deeds of trust, mortgages, promissory notes, releases of deeds of trusts, variable rate riders, HUD 1 settlement statements, and other instruments and documents affecting or relating to secular rights. In participating in those transactions, Affinity and Chicago, on their own behalf and through their agents, draw, procure, or assist in drawing for valuable consideration (through charging a fee) documents and instruments like deeds of trust, mortgages, promissory notes, releases of deeds of trusts, variable rate riders, HUD 1 settlement statements, and other instruments and documents affecting or relating to secular rights, including interests in and title to real estate and legal obligations between parties (such instruments and documents referred to hereinafter as "Legal Documents"). The respective services provided and tasks performed by Affinity and Chicago are substantially the same and do not materially vary from one real estate transaction to another.

6. Among the transactions in which Affinity and Chicago or their agents have participated is one involving Loan No. 4405030934 closed on or about December 6, 2004 in which

Brent M. Krause and Jill Krause (hereinafter referred to collectively as the "Krauses") borrowed money to purchase a house located at 1134 North Glenview Avenue, Independence, Jackson County, Missouri. In connection with that transaction, the Krauses were charged and the Krauses paid to Affinity \$300 represented by Chicago on a HUD 1 settlement statement to be a "processing fee to Affinity Lending Group." Also in connection with that transaction, the Krauses were charged and the Krauses paid to Chicago \$25 represented by Chicago on a HUD 1 settlement statement to be for "document preparation." The closing of this transaction took place at 4358 South Noland Road, Independence, Jackson County, Missouri. The "document preparation" and the "processing" occurred in Jackson County, Missouri.

7. The fees referred to in paragraphs 5 and 6 above were charged by Affinity and Chicago or their agents and paid by the Krauses and others to Affinity and Chicago or their agent for Affinity and Chicago or their agents drawing, procuring, or assisting in drawing Legal Documents.

8. As a general business practice, Affinity and Chicago and their agents have charged and have received from numerous individuals other than the Krauses "processing fees," "document preparation fees," or fees otherwise described for drawing, procuring, or assisting in drawing Legal Documents in connection with real estate transactions in which they have participated.

9. The drawing, procuring, or assisting in drawing of Legal Documents by Affinity and Chicago or their agents in connection with Loan No. 4405030934 and other real estate transactions and receiving a fee for doing that is "law business" as that term is defined in Mo. Rev. Stat. § 484.010(2).

10. Affinity, both in connection with Loan No. 4405030934 and generally, has engaged in law business and has not been and is not authorized or registered to do so.

11. Chicago and its agents, both in connection with Loan No. 4405030934 and generally, have engaged in law business and have not been and are not authorized or registered to do so.

12. Chicago and its agents also serve as an escrow agent performing real estate closing transactions. Chicago in conjunction with its services as an escrow agent collects from the borrower(s) an amount represented to be for Government Recording and Transfer Charges. Specifically, Chicago represents in HUD-1 settlement statements, like that concerning Loan No. 4405030934, that certain Recording Fees are charged by governmental entities in conjunction with recording the Mortgage and any associated Release and related documents. The method by which the governmental entities calculate such fees is known to Chicago, so Chicago could calculate the fees in advance of preparing the HUD-1 settlement statement and filing the documents.

13. Chicago collects from the buyers at closing the amounts represented by Chicago to be the actual Government Recording and Transfer Charges.

14. Unknown to borrowers, Chicago intentionally inflates on the HUD-1 settlement statement the Government Recording and Transfer Charges and collects from borrowers, including the Krauses, an amount that exceeds the Government Recording and Transfer Charges actually charged. For example, in connection with Loan No. 4405030934 Chicago intentionally and falsely represented in the HUD-1 settlement statement that the Government Recording and Transfer Charges were \$110.00. That was an intentionally false representation.

15. The actual Government Recording and Transfer Charges were \$99.00. Despite the actual charges, Chicago never remitted to the Krauses, or other similarly situated borrowers, the excess amount of money collected which belongs to the Krauses and those other borrowers.

16. Chicago and its agents have engaged in a pattern and practice of falsely representing that Government Recording and Transfer Charges are higher than the true charges and of keeping the overcharge.

**CLASS ACTION ALLEGATIONS: PLAINTIFFS' CLASSES**

17. This action is brought by the Krauses individually and as class representatives against Affinity to recover for themselves and for all other Missouri citizens who within the last two years and forward have paid to Affinity a “processing fee” or any fee for Affinity drawing, procuring, or assisting in drawing Legal Documents in Missouri in connection with real estate transactions in which they have participated.

18. This action is brought by the Krauses individually and as class representatives against Chicago to recover for themselves and for all other Missouri citizens who within the last two years and forward have paid to Chicago or its agents a “document preparation fee” or any fee for Chicago or its agents drawing, procuring, or assisting in drawing Legal Documents in Missouri in connection with real estate transactions in which they have participated.

19. This action is brought by the Krauses individually and as class representatives against Chicago to recover for themselves and for all other Missouri citizens who within the last five years and forward have been overcharged by Chicago for Government Recording and Transfer Charges.

20. The Krauses propose to represent three Plaintiff Classes defined as follows:  
1) all Missouri citizens who within the last two years and forward have paid to Chicago or its agents a “document preparation fee” or any fee for Chicago or its agents drawing, procuring, or assisting in drawing Legal Documents in Missouri in connection with real estate transactions in which Chicago and a class member have participated (hereinafter referred to as Class I); 2) all

Missouri citizens who within the last two years and forward have paid to Affinity a “processing fee” or any fee for Affinity drawing, procuring, or assisting in drawing Legal Documents in Missouri in connection with real estate transactions in which Affinity and a class member have participated (hereinafter referred to as Class II); 3) all Missouri citizens who within the last five years and forward have been overcharged by Chicago for Government Recording and Transfer Charges (hereinafter referred to as Class III).

21. On information and belief, Class I, II and III each consists of thousands of individuals, and the number of members of each class is so numerous that joinder of each member as a party to this action is impracticable. Moreover, the amount of damages suffered by each member of Class I, II and III is so small as to make an action for its recovery by each individual member economically unfeasible.

22. There are questions of law and fact common to each member of Class I and common to each member of Class II. Those common questions of law and fact include the following:

- a. Whether Affinity and/or Chicago or their agents in participating in real estate transactions have charged and have been paid a fee for drawing, procuring, or assisting in drawing Legal Documents.
- b. Whether in charging and being paid such a fee Affinity and/or Chicago or their agents engaged in law business under Mo. Rev. Stat. § 484.010.
- c. Whether Affinity and/or Chicago were professional corporations authorized to engage in law business or whether each or both of them violated Mo. Rev. Stat. § 484.020.

23. There are questions of law and fact common to each member of Class III.

Those common questions of law and fact include the following:

- a. Whether Chicago or its agents in serving as escrow agents overcharged for Government Recording and Transfer Charges.
- b. Whether Chicago or its agents in serving as escrow agents owed the borrowers fiduciary duties with respect to the charging of Government Recording and Transfer Charges.
- c. Whether overcharging for Government Recording and Transfer Charges breaches Chicago's fiduciary duties to borrowers.
- d. Whether overcharging for Government Recording and Transfer Charges is a conversion of money borrowers deposited with Chicago for the purpose of paying Government Recording and Transfer Charges.
- e. Whether overcharging for Government Recording and Transfer Charges constitutes a violation of Mo. Rev. Stat. § 407.010 et. seq.

24. The Krauses' claims are typical of the claims of each member of Class I, II and III.

25. Lead counsel for the proposed Class I, II and III, Rouse Hendricks German May PC, are experienced and knowledgeable concerning this type of litigation, and will fairly and adequately represent the interests of the proposed Class I, II and III.

26. Common questions of law and fact common predominate over any questions affecting any individual member of Class I, II and III, and a class action is superior to other available

methods for the fair and efficient resolution of this controversy. No unusual difficulties are anticipated in the management of this case as a class action.

27. This action is properly maintainable as a class action because separate adjudications could result in inconsistent results which would establish incompatible standards of conduct for Affinity and Chicago and its agents.

28. This action is properly maintainable as a class action because adjudications of any one individual class member would as a practical matter be dispositive of the interests of the other members of Class I, II, and III.

#### COUNT I

29. Krauses restate and incorporate by reference paragraphs 1 through 28 as though fully restated herein.

30. Mo. Rev. Stat. § 484.020 prohibits any corporation not authorized to engage in law business from engaging in such business.

31. Affinity has violated Mo. Rev. Stat. § 484.020.

32. Chicago has violated Mo. Rev. Stat. § 484.020.

33. Chicago is liable to the Krauses and Class I for three times the amount of all fees paid to it within the past two years and forward in connection with a real estate transaction for services rendered which constitute law business in Missouri.

34. Affinity is liable to the Krauses and Class II for three times the amount of all fees paid to it within the past two years and forward in connection with a real estate transaction for services rendered which constitute law business in Missouri.

WHEREFORE, the Krauses, individually and as representatives of Class I and Class II, pray for the following relief:

- a. An order certifying this action as a class action for the following two classes:
  - i. all Missouri citizens who within the last two years and forward have paid to Chicago or its agents a “document preparation fee” or any fee for Chicago or its agents drawing, procuring, or assisting in drawing Legal Documents in Missouri in connection with real estate transactions in which Chicago and a class member have participated;
  - ii. all Missouri citizens who within the last two years and forward have paid to Affinity a “processing fee” or any fee for Affinity drawing, procuring, or assisting in drawing Legal Documents in Missouri in connection with real estate transactions in which Affinity and a class member have participated;
- b. An order appointing the Krauses, individually and collectively, as representatives of Class I and Class II;
- c. An order appointing Rouse Hendricks German May PC as class counsel for Class I and Class II;
- d. An order requiring Affinity and Chicago to pay the costs and expenses of class notice and claim administration;
- e. Entry of judgment against Chicago and in favor of the Krauses and the members of Class I for three times the amount of all fees paid to Chicago within the past two years and forward in connection with a

real estate transaction for services rendered in Missouri which constitute law business, plus prejudgment interest;

- f. Entry of judgment against Affinity and in favor of the Krauses and the members of Class II for three times the amount of all fees paid to Affinity within the past two years and forward in connection with a real estate transaction for services rendered in Missouri which constitute law business, plus prejudgment interest.
- g. Entry of judgment awarding class counsel reasonable attorneys' fees and that all expenses of this action to be paid by defendant,
- h. Entry of judgment for post-judgment interest, costs, and any further and additional relief as to which they may be entitled.

#### COUNT II-FRAUD

35. Krauses restate and incorporate by reference paragraphs 1 through 34 as though fully restated herein.

36. Chicago represented to the Krauses and in the HUD- settlement statement in connection with Loan No. 4405030934 that the Government Recording and Transfer Charges were \$110.00. Chicago likewise falsely represented to the members of Class III the Government Recording and Transfer Charges. The representations to the members of Class III were likewise made in the HUD-1 settlement statements for the transactions with the members of Class III.

37. Chicago's representations were false.

38. Chicago knew the representations were false at the time the representations were made, or recklessly disregarded their truth or falsity.

39. The representation was material to the Krauses' payment of the Government Recording and Transfer Charges. The representations to the members of Class III were likewise material.

40. The Krauses relied on the representation in paying the Government Recording and Transfer Charges. The members of Class III likewise relied on the representations.

41. As a direct result of the false representation the Krauses and the members of Class III were damaged.

42. Chicago's conduct was outrageous because of Chicago's evil motive and reckless indifference to the rights of others.

### **COUNT III- UNJUST ENRICHMENT**

43. Krauses restate and incorporate by reference paragraphs 1 through 42 as though fully restated herein.

44. Chicago knew and appreciated when it overcharged for Government Recording and Transfer Charges in connection with Loan No. 4405030934, and the loans involving the members of Class III.

45. The Krauses and the members of Class III in unknowingly paying the overcharges conferred a benefit on Chicago by virtue of the additional money paid to Chicago. Chicago retained the money.

46. In light of the circumstances of the transaction, acceptance and retention of the additional funds by Chicago would be inequitable.

#### **COUNT IV-BREACH OF FIDUCIARY DUTY**

47. Krauses restate and incorporate by reference paragraphs 1 through 46 as though fully restated herein.

48. Chicago by virtue of its status as the escrow agent for Loan No. 4405030934, and the loans for the members of Class III had a fiduciary duty to the Krauses and the members of Class III.

49. Chicago breached its fiduciary duty by falsely representing the amount of Government Recording and Transfer Charges in connection with Loan No. 4405030934 and the loans involving the members of Class III and, further, by retaining the excess money Chicago collected for Government Recording and Transfer Charges.

50. As a result of Chicago's breach of fiduciary duty, the Krauses and the members of Class III were damaged.

51. Chicago's conduct was outrageous because of Chicago's evil motive and reckless indifference to the rights of others.

#### **COUNT V-CONVERSION**

52. Krauses restate and incorporate by reference paragraphs 1 through 51 as though fully restated herein.

53. The Krauses put \$110 in the custody of Chicago for the specific purpose of paying the Government Recording and Transfer Charges. The members of Class III likewise put funds in the custody of Chicago for the specific purpose of paying the Government Recording and Transfer Charges.

54. Chicago misappropriated \$11 of the Krauses' funds. Chicago likewise misappropriated funds belonging to the members of Class III.

55. Chicago thereby deprived the Krauses and the members of Class III of the right of possession of their money.

56. Chicago's conduct was outrageous because of Chicago's evil motive and reckless indifference to the rights of others.

**COUNT VI-VIOLATION OF MO. REV. STAT. §407.010 ET. SEQ.**

57. Krauses restate and incorporate by reference paragraphs 1 through 56 as though fully restated herein.

58. By representing the Government Recording and Transfer Charges were \$110 for Loan No. 4405030934 when in fact the charges were \$99 (and likewise misrepresenting the amounts for the other members of Class III) Chicago used a deception, fraud, false pretense, misrepresentation and unfair practice, and concealed a material fact in connection with the sale of "merchandise," as that term is defined in Mo. Rev. Stat. §407.010, in trade or commerce.

59. Chicago did so while performing services as a closing agent.

60. Chicago's actions violated Mo. Rev. Stat. §407.010 et seq.

61. The Krauses and the members of Class III purchased Chicago's escrow closing services for personal, family or household uses and suffered an ascertainable loss of money by virtue of Chicago's actions.

62. Chicago's conduct was outrageous because of Chicago's evil motive and reckless indifference to the rights of others.

**COUNT VII - MONEY HAD AND RECEIVED**

63. Krauses restate and incorporate by reference paragraphs 1 through 62 as though fully restated herein.

64. Chicago received money from the Krauses, and the other members of Class III, in trust to pay the actual Government Recording and Transfer charges.

65. Chicago did not use all the money it received for the purpose for which it was collected.

66. Chicago breached the trust with which it collected the money from the Krauses and the other members of Class III, and equity and good conscience call for Chicago to pay to Krauses and the other members of Class III that amount which represents the difference between the amount as collected for Government Recording and Transfer charges and the amount charged for Government Recording and Transfer charge.


WHEREFORE, the Krauses, individually and as representatives of Class III pray for the following relief:

- a. An order certifying this action as a class action for the following class:  
  
all Missouri citizens who within the past five years  
and forward have paid overcharges by Chicago for  
Government Recording and Transfer Charges in  
connection with escrow agent services in Missouri;
- b. An order appointing the Krauses, individually and collectively, as  
representatives of Class III;

- c. An order appointing Rouse Hendricks German May PC as class counsel for Class III;
- d. An order requiring Chicago to pay the costs and expenses of class notice and claim administration;
- e. Entry of judgment against Chicago and in favor of the Krauses and the members of Class III for the total amount of overcharges by Chicago for Government Recording and Transfer Charges within the past five years and forward in connection with escrow agent services in Missouri, plus prejudgment interest;
- f. An award of punitive damages sufficient to punish Chicago for its conduct and to deter others from such conduct in the future;
- g. Entry of judgment awarding class counsel reasonable attorneys' fees and that all expenses of this action to be paid by defendant,
- h. Entry of judgment for post-judgment interest, costs, and any further and additional relief as to which they may be entitled.

Respectfully submitted,

ROUSE HENDRICKS GERMAN MAY PC

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