STATE OF NORTH CAROLINA
WAKE COUNTY

IN A MATTER
BEFORE THE COMMISSIONER OF BANKS
DOCKET NO. 2005:008:CF

IN RE:	)
	)
ADVANCE AMERICA, CASH ADVANCE CENTERS OF NORTH CAROLINA, INC.	)
	)

OPPOSITION TO MOTION TO INTERVENE
BY THE OFFICE OF THE ATTORNEY GENERAL

Advance America, Cash Advance Centers of North Carolina, Inc. ("Advance America-NC"), respectfully submits its opposition to the motion to intervene filed by the Office of the Attorney General. The basis of this opposition is two-fold: First, we are concerned about the reality and appearance of a lack of fairness in this proceeding should intervention be granted to Attorney General Roy Cooper. This fairness concern arises from the Attorney General publicly prejudging the very type of marketing and servicing contractual agreements at issue in this case, between Advance America-NC and Republic Bank & Trust Co. ("Republic"), as a "rent-a-charter" arrangement and a "sham" designed to evade the effect of North Carolina's usury law. These inflammatory statements were made long before a single piece of evidence was adduced in this case from Advance America-NC.[1]

Our concern over the Attorney General's rush to judgment in this case, before obtaining and considering any evidence offered in defense by Advance America-NC, is

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[1] Advance America-NC received a civil investigative demand from the Office of the Attorney General on August 26, 2004. The statements at issue were made well before that date, and were amply quoted in the press.

magnified in the context of this contested case proceeding because, during the preliminary, non-public, and informal fact-gathering stage of the instant case, at least one member of the Office of the Attorney General, McNeil Chestnut, was assigned to assist the Commissioner in the performance of his duties pursuant to N.C. GEN. STAT. § 114-2(2) (2004) and remains so assigned. Other members of the Office of the Attorney General – Joshua Stein and Philip Lehman – sat at the Commissioner's table during all or part of the preliminary hearing, and Mr. Lehman assisted in the questioning. On information and belief, these individuals likely provided input toward the Commissioner's decision to issue the Notice of Hearing dated February 1, 2005.

We appreciate that, under normal circumstances, intervention of the Office of the Attorney General may be authorized by N.C. GEN. STAT. § 114-2(8)(a) (2004) under a broad "public interest" standard. Indeed, the Notice of Hearing acknowledges the possibility that the Attorney General may seek to intervene. In the instant formal contested proceeding, however, the reality and appearance of fairness – in short, the "public interest" – can hardly be furthered by now transforming the Attorney General and his designees into advocates *before* the Commissioner after they have expressed prejudgment regarding the issues at stake and participated *with* the Commissioner in the preliminary aspect of this case. Given that nothing less is at stake than the future of operations for Republic and Advance America-NC in this State, all safeguards respecting the reality and appearance of unequivocal fairness on the part of the Commissioner must be observed.

Second, the motion to intervene should be denied because such a ruling is necessary to preserve the absolute right of Advance America-NC to subpoena and call as witnesses during this proceeding the same individuals who, we understand, would seek to represent the Office of the Attorney General in this matter; namely, Messrs. Cooper, Stein,

Lehman, and Chestnut. *See* N.C. GEN. STAT. § 150B-39(c) (2004). While discovery has yet to commence, on information and belief we can proffer our understanding that at least these individuals, and possibly others from the Office of the Attorney General, made public statements and met with representatives of Advance America-NC and other companies and industry groups at or just subsequent to the time of the sunset of N.C. GEN. STAT. § 53-281 (1997). These meetings and statements concerned the implications for the conduct of payday cash advance-related business in the State after the sunset, including the reach of one or more of the statutes implicated in the Notice of Hearing. Advance America-NC had the right to rely on such statements in the structuring and conduct of its business in this State following the sunset, and these statements may constitute relevant legislative history-type evidence concerning the reach of the statutes at issue here.

The case law, ethical rules, and ABA Standards provide that a prosecutor (not to mention other lawyers) must eschew a dual role as advocate and witness in the same case. Intervention by the Office of the Attorney General here, most particularly the involvement as advocates of the gentlemen named above who may well be witnesses, would be improper and not "in the public interest," given the need to adhere to this fundamental principle of fairness and procedural correctness.

ARGUMENT

I. THE ATTORNEY GENERAL'S MOTION MUST BE DENIED TO PRESERVE THE REALITY AND APPEARANCE OF FAIRNESS GIVEN HIS PUBLIC STANCE PREJUDGING THIS MATTER.

Courts in this State have recognized that preserving the appearance of fairness and "optimizing the conditions for finding the truth" "protects the integrity of the system[.]" *State v. Neal*, 346 N.C. 608, 615-16, 487 S.E.2d 734, 739 (1997). The Attorney General has long made public statements against not only selected payday cash advance companies pursued by his Office, but also against the industry generally even though many companies, such as Advance America-NC, did not become the subject of investigation until recently. Such statements have, apparently, been viewed as politically correct and popular.[2] The instant proceeding by the Commissioner, to the contrary, must actually and as a matter of appearance adhere strictly to applicable procedural rules and afford Advance America-NC full due process rights. *See* N.C.G.S. § 150B-38 *et seq.* Politics and the winds of public opinion have no place in this proceeding. Given the Attorney General's public stance of prejudgment on many of the issues presented in the Notice of Hearing, fairness and the appearance of fairness require that the motion for intervention be denied.

As early as January 2002, before Advance America-NC produced a single piece of evidence in the course of any governmental inquiry in this State, the Attorney General charged publicly that payday cash advance businesses were improperly "aligning with federal banks to avoid state usury laws." (Chris Serres, *North Carolina Attorney General to Take Action against*

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[2] *See, e.g.*, Roy Cooper for Attorney General, *The Roy Cooper Record: Protecting Consumers From Scams*, *at* http://www.roycooper.com/record_4.shtml (last visited March 10, 2005). (Exh. A).

Payday Lenders, The News & Observer, Jan. 9, 2002) (Exh. B). Again speaking generally and industry-wide, the Attorney General further described the agency model relationship with federally-regulated banks as "a sham to disguise an illegal payday loan." (Lynn Bonner, *North Carolina Sues to Block Payday Lender*, The News & Observer, Jan. 15, 2002) (Exh. C). After suing Ace Cash Express, Inc., in 2002, the Attorney General pledged that the case would "not be the last action we take to clean up payday lending in North Carolina." (Amber Veverka, *Suit Seeks Halt to Payday Loans: Texas Lender's N.C. Operations Targeted*, The Charlotte Observer, Jan. 15, 2002) (Exh. D). Again speaking broadly, he offered his view that "this kind of loan is like asking for a lifeboat and being thrown an anvil." *Id.* In short, the Attorney General has publicly prejudged the entire payday cash advance industry, well before the instant inquiry commenced last fall, and he can hardly be said to have demonstrated an open mind on the issue.

What is especially troubling about the broad statements quoted above, which are representative of what is in the public record, is that they concern a key issue in this proceeding – namely, whether Advance America-NC's marketing, servicing, and processing agency relationship with Republic represents an evasion of North Carolina law. Given the Attorney General's view of the situation, evidently formed by events outside the administrative record yet to be compiled in this case, the participation of the Office of the Attorney General as an intervenor implicates principles underlying the "extrajudicial source doctrine" outlined in *Liteky v. United States*, 510 U.S. 540, 555 (1994).

In short, the *Liteky* line of cases support denial of intervention "in the public interest" because the Attorney General's prejudgment of this matter and politicization of the issue would demonstrate "such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* Here, if the Attorney General is allowed to intervene, any adverse judgment by

the Commissioner regarding the structure or conduct of Republic's and Advance America-NC's business in this State would be vulnerable to criticism that it was "somehow *wrongful* or *inappropriate,* either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree . . . ." *Id.* at 550 (emphasis in original); *see also Berger v. United States*, 255 U.S. 22, 28 (1921) (applying extrajudicial source doctrine). Given Mr. Chestnut's participation in the case already pursuant to N.C. GEN. STAT. § 114-2(2) (2004), whereby the interests of the Office of the Attorney General can be represented fully, the public's interest in the reality and appearance of impartiality and fairness militate in favor of denying the motion to intervene.[3]

We are mindful that the extrajudicial source doctrine applies principally to the recusal of judges. Our point in citing the doctrine is that in weighing "the public interest," admittedly a plenary standard, the Commissioner should consider its teaching in determining the atmosphere and perception of fairness he wishes to foster during the instant proceeding. In determining whether "the public interest" supports the intervention of the Attorney General, the Commissioner should consider whether it is appropriate in this administrative proceeding to raise the spectre that the process may become politicized through the participation of an elected official whose view about the key issues at stake in this case were formed well before and fully

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[3] *Cf., e.g., Hathcock v. Navistar Int'l Transp. Corp.*, 53 F.3d 36, 41 (4th Cir. 1995) (finding that "judge's *ex parte* contacts requesting the Hathcocks' counsel to draft at least the factual basis of a default order, and possibly its legal conclusions as well, do not foster an impression of objectivity"); *Bowens v. North Carolina Dep't of Human Resources*, 710 F.2d 1015, 1020 (4th Cir. 1983) ("To be disqualifying, personal bias must stem from a source other than knowledge a decision maker acquires from participating in a case."); *Sowers v. Toliver*, 150 N.C. App. 114, 119-20, 562 S.E.2d 593, 596-97 (2002) (finding that extrajudicial source doctrine was not implicated where "any bias or prejudice the trial judge may have displayed arose as he reacted to the evidence presented . . . during the course of the trial").

apart from reviewing the evidence – two years before Advance America-NC was asked to produce a single document in this matter. The Commissioner should not allow the intervention of an elected official who has so clearly pre-formed a view of the facts as to infect this proceeding. To avoid bias, or even the appearance of bias, the motion to intervene should be denied.

Further, permitting Messrs. Stein and Lehman to intervene in this proceeding would also disregard "the public interest" in the appearance of fairness, impartiality, and procedural correctness.[4] These gentlemen sat at the Commissioner's table during the non-public preliminary examination in this matter, providing the appearance that they were cooperating with the Commissioner. As to Mr. Lehman, his questioning and input provided the Commissioner *with direct assistance* leading up to the issuance of the Notice of Hearing. To transform the status of these Attorney General designees from one of working *with* the Commissioner, to one of becoming advocates *before* the Commissioner, is not appropriate. Due process requires that "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954); *see also Withrow v. Larkin*, 421 U.S. 35, 55 (1975) (citing need to "be alert to the possibilities of

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[4] At least on its face, Mr. Chestnut does not appear to be included within the Attorney General's motion to intervene. As noted above, we understand that, pursuant to N.C. GEN. STAT. § 114-2(2) (2004), Mr. Chestnut has been assigned to the Commission staff. On information and belief, it appears that Mr. Chestnut helped prepare the original subpoenas and Notice of Investigative Demand in this matter, inasmuch as Paralegal Angela B. Maynard of his office signed the cover letter dated August 26, 2004. This letter stated, "If you have any questions, you may contact L. McNeil Chestnut, Special Deputy Attorney General *and counsel to the Commissioner of Banks*." (emphasis added) Given Mr. Chestnut's role, it would appear that granting the motion to intervene is unnecessary as a practical matter. Mr. Chestnut, in his capacity as Special Deputy Attorney General, could represent the interests of the Attorney General while performing his duties as counsel to the Commissioner.

bias that may lurk in the way particular procedures actually work in practice").[5] The motion to intervene should be denied.

II. THE ATTORNEY GENERAL'S MOTION TO INTERVENE MUST BE DENIED TO PRESERVE THE ABSOLUTE RIGHT OF ADVANCE AMERICA-NC TO CALL MEMBERS OF HIS OFFICE AS WITNESSES.

The Attorney General's motion to intervene also must be denied to preserve the absolute due process right of Advance America-NC to subpoena and call as witnesses during this proceeding the same individuals who, as we understand it, would represent the Office of the Attorney General if permitted to intervene in this matter. *See* N.C. GEN. STAT. § 150B-39(c) (2004). The case law, ethical rules and ABA standards prevent a witness from assuming the role of advocate, and "the public interest" can hardly be said to support flouting this principle of fundamental fairness.

The principle enunciated in the case law is clear: Attorneys are strongly discouraged "from serving as both a witness and an advocate." *Robinhood Trails Neighbors v. Winston-Salem Zoning Bd. of Adjustment*, 44 N.C. App. 539, 543, 261 S.E.2d 520, 523 (1980). Courts show a "natural reluctance to allow attorneys to appear in a case as both advocate and witness." *State v. Simpson*, 314 N.C. 359, 373, 334 S.E.2d 53, 62 (1985); *see also Robinson & Lawing, L.L.P. v. Sams*, 161 N.C. App. 338, 587 S.E.2d 923 (2003) (holding that trial court did not abuse discretion in disqualifying defense counsel where opposing party considered defense

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[5] Put another way, the inquiry is not simply whether there is actual bias inherent in the cooperative relationship between the Commissioner and the Attorney General's staff, but also whether there is "such a likelihood of bias or an appearance of bias" that the Commissioner would be "unable to hold the balance between vindicating the interests" of his office with the influence of the Attorney General's office. *See Ungar v. Sarafite*, 376 U.S. 575, 588 (1964).

counsel a witness and stated its intention to call defense counsel to testify); *Berkeley Fed. Sav. and Loan Ass'n v. Terra Del Sol, Inc.*, 111 N.C. App. 692, 711, 433 S.E.2d 449, 459 (1993) (recognizing that defendant's motion to disqualify plaintiff's counsel should be granted where plaintiff's counsel "ought to or would be called as a witness by either party in the matter"); *Byrd v. Hopson*, Nos. 03-1899, 03-2073, 03-2346, 2004 WL 1770261, at *2 (4th Cir. 2004) (finding no abuse of discretion in ruling that attorney's dual role as advocate and witness "presented a conflict of interest that required his disqualification"); *United States v. Birdman*, 602 F.2d 547, 553 (3d Cir. 1979) (noting that courts "have almost universally frowned upon" a prosecutor testifying in a case he or she is prosecuting, whether for or against the defendant); *United States v. Schwartzbaum*, 527 F.2d 249, 253 (2d Cir. 1975) (noting that testimony by a prosecutor "inevitably confuse[es] the distinctions between advocate and witness, argument and testimony").

Similarly, from an ethical standpoint, the American Bar Association Model Rules of Professional Conduct, Rule 3.7(a) (2003), provides that "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness." *See also* Revised Rules of Professional Conduct of the North Carolina State Bar, Rule 3.7 (a) (2003) (same); American Bar Association Model Code of Professional Responsibility, at EC 5-9 ("The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively"). Certainly no authority of which we are aware holds that it is "in the public interest" to meld the roles of advocate and witness in a single proceeding.

Discovery has not commenced in this matter. But applying the principle set forth above, on information and belief we understand that Messrs. Cooper, Stein, Lehman, and Chestnut made public statements and met with representatives from Advance America-NC and

other payday cash advance companies and industry groups at or just subsequent to the time of the sunset of North Carolina's payday lending law, N.C. GEN. STAT. § 53-281 (1997). Further, we understand that the individuals named above may have made statements regarding the scope and interpretation of State law as it pertained to payday cash advance companies doing business in North Carolina as marketing, servicing, and processing agents for federally regulated banks. Advance America-NC had the right to rely on such statements, following the sunset, in structuring and carrying out its business in this State. Such statements also may prove relevant as legislative history-type evidence concerning the scope and interpretation of the statutes at issue in this proceeding. Due to the role as witnesses these individuals may play, the motion to intervene as a party should be denied.

CONCLUSION

For the reasons set forth above, Advance America-NC respectfully requests that the motion to intervene filed by the Office of the Attorney General be denied.

Dated: March 11, 2005

Respectfully submitted,

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Exhibit *A*

Roy Cooper for Attorney General

The Roy Cooper Record

Home
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Protecting consumers from scams

Giving patients a voice in health insurance decisions

From stopping unnecessary medical procedures to getting critical surgeries covered, Cooper's Managed Care Patients Assistance Program helps patients navigate their health insurance benefits every day. Thousands of callers with hundreds of questions are getting help. The work affected thousands of people, such as a fix to incorrectly billed co-payments that saved consumers more than $200,000 last year. Other assistance helped individuals, such as patients who faced critical surgeries and needed quick advice on how to cut through red tape.

Fighting Identity Theft

As studies show that identity theft is the fastest growing crime, Cooper continued his push to provide new tools for law enforcement, educate consumers and encourage businesses and government to protect their customers' financial information. He also successfully pushed legislators to toughen penalties and to prevent businesses from printing consumers' credit card numbers on receipts, reducing their vulnerability to identity theft. He has been recognized by the Federal Trade Commission as a national leader

in fighting this crime.

Stopping unwanted telemarketing calls

The highly successful Do Not Call law, which Cooper pushed through the General Assembly, has slowed telemarketing calls and given consumers the chance for peace and quiet at home. More than 1.9 million North Carolina phone numbers are on the Do Not Call Registry, and our state ranks fifth in the nation in the state's percentage of new registrants.

Cooper and his consumer protection team are taking telemarketers who break the law to court, making them pay for violations and ordering them to stop harassing consumers who don't want to be bothered.

Winning refunds for consumers

After investigating unfair lending practices by Household and Beneficial Finance, the Attorney General distributed $11 million in refunds to homeowners in the nation's largest such settlement. Another $7.9 million went to community health programs after a settlement with leading vitamin manufacturers accused of unfair pricing practices.

North Carolina's largest single settlement for predatory lending against the Associates resulted in $20 million in refunds for mortgage holders. The industry had tried to rob unsuspecting homeowners of equity with inflated fees and hidden balloon payments. In the end, they refunded consumers and agreed to stop the illegal loans. Overall, Cooper has recovered more than $60 million in restitution for North Carolina consumers.

Taking North Carolina's law against unfair lending to the nation

Cooper took his fight against predatory lending to Washington, telling senators to allow him and other state prosecutors to fight for fair

loans for consumers instead of erasing the state laws. Cooper, who leads the Consumer Protection Committee for attorneys general nationwide, has fought against watering down rules that would undercut North Carolina's tough laws. As a state senator, Cooper wrote the predatory lending law by outlawing high fees, hidden costs and unfair penalties, and it has served as a model for state laws across the nation.

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Roy Cooper for Attorney General
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Exhibit *B*

1/9/02 News & Observer (KRTBN) (NC) (Pg. Unavail. Online)
2002 WLNR 9008285

News and Observer (Raleigh, NC)
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January 9, 2002

North Carolina Attorney General to Take Action against Payday Lenders

Chris Serres

Jan. 9--RALEIGH, N.C.--North Carolina is preparing its first shot in what could be a prolonged fight against payday lenders.

By Chris Serres, The News & Observer, Raleigh, N.C.

Jan. 9--RALEIGH, N.C.--North Carolina is preparing its first shot in what could be a prolonged fight against payday lenders.

Attorney General Roy Cooper said Tuesday that his office will take action within the next 10 days against one or more lenders that make short-term loans at high interest rates to people between paychecks. Cooper would not say whether the action involved a fine, lawsuit or warning.

Cooper said the state government has evidence that payday lenders are aligning with federal banks to avoid state usury laws. In North Carolina, lenders can charge no more than 36 percent annually for consumer finance loans, Cooper said. Currently, some payday lenders are charging annual interest rates exceeding 400 percent, he said.

Some payday lenders seek to avoid state rules by obtaining federal bank charters. Cooper said he hopes to end this practice, which he calls "rent-a-charter," in this state. "This practice is not in the best interests of consumers," Cooper said. "And we've gathered enough data to take action."

A week ago, federal regulators ordered a Pennsylvania bank to sever its relationship with Dollar Financial Group, one of the nation's largest payday lenders. The Office of the Comptroller of the Currency, which regulates national banks, said the bank had put itself at risk of failure by making too many high-risk, payday loans.

To see more of The News & Observer, or to subscribe to the newspaper, go to http://www.news-observer.com.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Judicial (1JU36); Legal (1LE33); Economics & Trade (1EC26))

INDUSTRY: (Banking (1BA20); Financial Services (1FI37); Retail Banking Services (1RE38); Financial Services Regulatory (1FI03); Consumer Finance (1CO55))

REGION: (North Carolina (1NO26); USA (1US73); Americas (1AM92); North America (1NO39))

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Language: EN

OTHER INDEXING: (CURRENCY; NEWS OBSERVER) (Attorney; Chris Serres; Cooper; Jan; Payday Lenders; Roy Cooper) (Banking; Economy; Personal Finance; Stocks)

Word Count: 329
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Exhibit *C*

1/15/02 News & Observer (KRTBN) (NC) (Pg. Unavail. Online)
2002 WLNR 9044401

News and Observer (Raleigh, NC)
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January 15, 2002

North Carolina Sues to Block Payday Lender

Lynn Bonner

Jan. 15--The state went to court Monday against one of the nation's largest payday-lending companies, trying to stop Ace Cash Express from making short-term loans in North Carolina.

By Lynn Bonner, The News & Observer, Raleigh, N.C.

Jan. 15--The state went to court Monday against one of the nation's largest payday-lending companies, trying to stop Ace Cash Express from making short-term loans in North Carolina.

Ace, which has at least 16 outlets in the state, charges borrowers too much, and continues to make payday loans although a state law allowing the practice has expired, alleges a complaint the state Attorney General's Office filed in Wake County Superior Court.

The state law allowing payday lending expired Aug. 31, but many companies defied state regulators' orders to stop making the short-term, high-interest loans.

Some companies became affiliated with nationally chartered banks, a relationship they contend exempts them from state law. Ace, based in Irving, Texas, is affiliated with Goleta National Bank in California.

State and federal regulators are putting such relationships under increased scrutiny. Critics of the practice say the lenders are using a "rent-a-charter" to skirt state laws.

"It is a sham to disguise an illegal payday loan," Attorney General Roy Cooper said of the Ace arrangement with Goleta.

North Carolina is the fourth state to sue Ace. Cooper joined attorneys general and regulators from 15 other states supporting Ohio's court action against Ace and Goleta.

Ace has about 1,170 stores in 34 states and Washington. Most of its North Carolina stores are in Charlotte, but it has one outlet in Durham.

Officials with Ace, Goleta, and the bank's holding company, Community West Bancshares, did not return telephone calls Monday.

But Billy Webster, president of the Community Financial Services Association, a payday-lending trade group, said that nothing is wrong with the relationships between financial institutions and that they aren't unusual.

"Using a third-party agent to market and service loans is a common and legal practice used to provide car loans, mortgages, credit cards and various other financial services," Webster said in a statement. "Banks are authorized to do this under federal law through

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the rules of the National Bank Act."

Ace is not a member of the trade association. It left the association a few years ago, when the trade group implemented business guidelines.

At a news conference, Cooper said Ace wouldn't be the last payday lender the state would try to stop. Ace was first, he said, because "this company is one of the worst actors, not only in North Carolina, but nationally."

The state claims that the company's payday loans are illegal and that its rates are higher than those allowed under the state's consumer finance law.

Ace charges a $17 fee for each $100 borrowed, up to $500. The loans can be renewed three times if the borrower pays the interest and 5 percent of the principal. The fees and loan ceilings would have exceeded the old state law.

"A loan like this is like asking for a lifeboat and being thrown an anvil," Cooper said.

Hal D. Lingerfelt, the state commissioner of banks, said Ace operated outside the restrictions of the payday-lending law before it expired.

North Carolina consumer groups, which had been working to put more restrictions on payday lending last year, applauded the state action.

"It's clear that Goleta Bank and Ace Express are violating our current consumer finance laws," said Stella Adams, executive director of the N.C. Fair Housing Center and a member of a stateside coalition working on lending-law reforms. "You can't use one law to escape another."

A few weeks ago, the Office of the Comptroller of the Currency, the federal agency that regulates national banks, ordered Eagle National Bank in Pennsylvania to get out of the payday-lending business.

According to the Community Reinvestment Association of North Carolina, Express Money Service of Fayetteville and Urgent Money Service of Greensboro are affiliated with Eagle. The two companies, which have 68 branches in the state, will have to find another bank partner or stop making loans, the reinvestment association said.

Last session, the General Assembly failed to reauthorize the state's payday-lending law. Legislators were caught between consumer groups, who wanted more limits on loans and lower fees, and industry groups, which wanted few controls.

"I believe there is a place for small, short-term emergency loans for consumers at a fair cost," Cooper said. "We now almost have a sense of anarchy without a law."

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---- INDEX REFERENCES ----

COMPANY: GOLETA NATL BK CALIF

NEWS SUBJECT: (Economics & Trade (1BC26))

INDUSTRY: (Banking (1BA20); Financial Services (1FI37); Retail Banking Services

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(1RE38); Financial Services Regulatory (1FI03); Consumer Finance (1CO55))

REGION: (North Carolina (1NO26); USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

OTHER INDEXING: (ACE; ACE EXPRESS; COMMUNITY FINANCIAL SERVICES ASSOCIATION; COMMUNITY REINVESTMENT ASSOCIATION; CURRENCY; EAGLE; EAGLE NATIONAL BANK; EXPRESS MONEY SERVICE; GOLETA; GOLETA BANK; GOLETA NATIONAL BANK; NC FAIR HOUSING CENTER; NATIONAL BANK ACT; NEWS OBSERVER; STATE; URGENT MONEY; WAKE COUNTY SUPERIOR COURT) (Assembly; Billy Webster; Cooper; Hal D. Lingerfelt; Jan; Lynn Bonner; Ohio; Roy Cooper; Stella Adams; Webster) (Banking; Economy; Personal Finance; Stocks)

TICKER SYMBOL: AACE; CWBC

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Exhibit *D*

1/15/02 Charlotte Observer (N.C.) 1D
2002 WLNR 2237169

Charlotte Observer (NC)
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January 15, 2002

Section: BUSINESS

SUIT SEEKS HALT TO PAYDAY LOANS TEXAS LENDER'S N.C. OPERATIONS TARGETED

AMBER VEVERKA, STAFF WRITER

N.C. Attorney General Roy Cooper has sued a payday lender that he said overcharges consumers for loans - and expects to file more suits in weeks to come.

"This will not be the last action we take to clean up payday lending in North Carolina," Cooper said Monday. "I believe consumers need a way to get small, short-term loans at a fair cost. But this kind of loan is like asking for a lifeboat and being thrown an anvil."

The suit, filed Monday in Wake County Superior Court, seeks an injunction against the payday lending practice of Ace Cash Express Inc., which is based in Irving, Texas, and operates at least 20 stores in North Carolina, 10 of them in Charlotte.

Payday lending is the controversial practice of making short-term, high-interest loans to people who are short on cash. Payday loans are so named because, ostensibly, they're supposed to tide a person over until the next paycheck.

North Carolina's payday lending industry was outlawed four months ago when lawmakers let expire the law that allowed it. But some payday lenders kept making loans, protected, they claimed, by their partnership with nationally chartered banks based outside the state. Ace partnered with Calif.-based Goleta National Bank to offer the loans.

"It's a scheme to overcharge consumers and avoid North Carolina law," Cooper said.

The suit claims Ace charges consumers $17 per $100 borrowed, which translates to an annual percentage rate of 443 percent. N.C. consumer lending laws cap rates at 36 percent, and its check cashing law prohibits companies licensed to cash checks - which Ace is - from making payday loans.

An investor relations official at Ace's headquarters in Texas said no one at the company was available to comment on the suit. A Charlotte Ace store manager referred calls to the corporate headquarters.

What could be next: An N.C. lawsuit against companies that offer a form of payday loan by claiming to offer Internet service that comes with a cash rebate. Such businesses sign up customers for a year's worth of payments and give them an immediate cash rebate.

Even critics of payday lending - who say it traps consumers on a debt treadmill - acknowledge there's intense demand for short-term emergency loans (see box). Some, like

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Cooper, would like to see N.C. lawmakers this year craft a new payday law that would lower fees, lengthen the loan term and restrict the number of loans consumers can get.

The payday trade group Community Financial Services Association of America (CFSA) would not comment on the suit against Ace (which isn't a CFSA member). But in a written statement, CFSA officials urged North Carolina to adopt "a new state law to regulate the payday advance industry so that consumers in the state can continue to have access to short-term and low-denomination loans."

The pressure against payday lenders is building nationwide.

North Carolina's suit follows similar suits filed against Ace by Colorado, Maryland, Louisiana and several other states. In a filing with the Securities and Exchange Commission late last year, Ace warned its earnings could be hurt if it doesn't win the cases.

And earlier this month, national banking regulators ordered Pennsylvania-based Eagle National Bank to stop making payday loans through its partner, Dollar Financial Group.

N.C. consumer advocate Peter Skillern applauded the N.C. lawsuit. But even if the attorney general wins the case, that's not enough, Skillern said.

"It's not a complete solution for consumers," he said. "It will provide greater protection from usury rates but it still doesn't provide short-term credit."

About the Industry

How it works: A customer writes the lender a postdated check for the amount he wants to borrow plus a fee. The lender holds the check and gives the borrower the money. At the end of the loan period, the borrower lets the lender cash the check or pays off the loan in cash.

The N.C. situation: The state's payday law capped fees at $15 per $100 loan. When it expired last summer, mom-and-pop payday lenders halted the business. But some larger chains partnered with out-of-state banks to keep lending.

Loan demand is strong: N.C. consumers took out 2.9 million loans totaling $649.5 million in 1999, 3.5 million transactions worth $834.8 million in 2000.

PHOTO

1. NORMAN NG - STAFF PHOTO. "I believe consumers need a way to get small, short-term loans at a fair cost," said N.C. Attorney General Roy Cooper. "But this kind of loan is like asking for a lifeboat and being thrown an anvil."

---- INDEX REFERENCES ----

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **OPPOSITION TO MOTION TO INTERVENE BY THE OFFICE OF THE ATTORNEY GENERAL** on all parties to this action by sending a copy by electronic mail and by United States mail, postage prepaid, addressed as follows:

L. McNeil Chestnut, Esq.
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This the 11th day of March, 2005.

Donald C. Lampe