

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

PHILLIP DECOHEN, *

On his own behalf and on behalf of all *
Others similarly situated, *

Plaintiff, *

v. *

CAPITAL ONE, N.A., *et al.*, *

Defendants. *

Case No. 1:10-cv-03157-WDQ

* * * * *

**NOTICE OF PENDENCY OF CLASS ACTION,
PROPOSED SETTLEMENT, AND HEARING**

**PLEASE READ THIS NOTICE CAREFULLY IN ITS ENTIRETY. YOUR
RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LAWSUIT
NOW PENDING IN THIS COURT.**

NOTICE IS HEREBY GIVEN pursuant to RULE 23 of the FEDERAL RULES OF CIVIL PROCEDURE and pursuant to Order of the U.S. District Court for the District of Maryland, to the following Class:

All borrowers in up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes two subclasses: (1) all borrowers in up to 1,500 transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "No Balance Subclass"); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "Balance Subclass").

Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital

One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

This notice is sent to you in the belief that you are a member of the above-defined Class.

This is not a lawsuit against you. This case is a class action brought on behalf of a class of consumers against Capital One, N.A. (“Capital One”). Here is some basic information as your legal rights may have been affected.

Read this notice carefully. Your rights and options are explained in this notice.

I. THE LAWSUIT

This proposed Settlement involves a lawsuit – *Decohen v. Capital One, N.A.* – currently pending in the U.S. District Court of Maryland, Civil Action No. 1:10-cv-03157-WDQ. The lawsuit was brought by Phillip Decohen (the “Representative Plaintiff”) as a proposed class action.

The Complaint alleges that Capital One acquired installment sales contracts for the purchases of automobiles from Maryland automobile dealers, which financed debt cancellation agreements or GAP Agreements that could not be financed under Maryland law. Based on these allegations, Representative Plaintiff filed a lawsuit asserting six claims for relief: (1) violation of the CLEC; (2) violation of Maryland’s Consumer Protection Act; (3) violation of the Maryland Retail Installment Sales Act; (4) breach of contract; (5) declaratory and injunctive relief; and, (6) unjust enrichment and restitution.

Capital One has denied all of Plaintiff’s claims and denies any wrongdoing and any liability to Plaintiff or to any putative class members in any amount. Capital One contends that Representative Plaintiff’s claims have no merit and that, if the lawsuit were to proceed, Capital One would prevail at trial.

This settlement was reached as the result of arms-length negotiations, including extensive mediation proceedings spanning nine months before U.S. Magistrate Judge Susan K. Gauvey. The settlement requires approval by the Court, and this Notice advises you of the proposed settlement so that you can consider your legal rights.

The parties arrived at this settlement before the Court determined whether class certification was appropriate. Accordingly, there has been no finding that Capital One violated any law in its conduct toward Class Members. Capital One has not admitted to any liability. This Settlement is a compromise of disputed claims and is not an indication of liability of any sort. Neither the Settlement nor this Notice should be construed as an admission or concession of liability by Capital One.

Counsel for the Representative Plaintiff and the Class (“Class Counsel”) have investigated the facts and the applicable law regarding the matters raised in the lawsuit. The issues before the Court are complex and there is uncertainty as to the outcome of the lawsuit. Class Counsel believe that the claims raised in the lawsuit have merit, but recognize that there is a risk that no class would be certified, leaving the Class Members no means for recovery without filing their own separate lawsuits. Therefore, the Representative Plaintiff, on behalf of all others similarly situated, has entered into a Settlement Agreement with Capital One made as of December 20, 2013, (the “Settlement Agreement”). The Court has given its preliminary approval of the Settlement Agreement. If the Court grants final approval of the Agreement, it will fully and finally resolve the claims asserted by the Representative Plaintiff against

Capital One, on behalf of himself and anyone else in the Class. **THIS NOTICE AFFECTS YOU BECAUSE IT IS BELIEVED THAT YOU ARE A MEMBER OF THE CLASS.**

II. CLASS ACTION

The parties have agreed and the Court has ordered that, for settlement purposes only, this lawsuit may be maintained as a class action, subject to final and permanent approval at the conclusion of the settlement process. If final approval does not occur, or if either party withdraws from the proposed settlement, the lawsuit will return to the same status as before the Settlement Agreement was signed.

III. COUNSEL FOR THE CLASS

The Court has appointed individuals from the following law firms as Class Counsel:

Benjamin H. Carney
Martin E. Wolf
Gordon & Wolf, Chtd.
102 W. Pennsylvania Ave., Suite 402
Towson, Maryland 21204

Mark H. Steinbach
Of Counsel to O'Toole Rothwell
1350 Connecticut Avenue, N.W., Ste 200
Washington, D.C. 20036

IV. THE PROPOSED SETTLEMENT

On December 20, 2013, Plaintiff and Capital One, through their respective counsel, entered into a Settlement Agreement that, if finally approved, will result in the dismissal with prejudice and release of all claims that were or could have been asserted by the Representative Plaintiff or any other Class Member against Capital One in connection with their automobile installment sales contracts. The Settlement Agreement is subject to final approval by the Court. The Settlement Agreement contains all the terms of the settlement. It is available for your inspection at the Office of the Clerk, U.S. District Court for the District of Maryland, Northern Division, 101 W. Lombard Street, Baltimore, MD 21201, during normal business hours, and can also be downloaded at www.capitalonegapsettlement.com.

Certification of Settlement Class

The Court has certified preliminarily, for settlement purposes only, the Class defined above. The Court will hold a final fairness hearing on class certification on April 11, 2014, at 10:00 a.m.

Equitable Relief

The Settlement Agreement requires Capital One to waive all outstanding balances and/or deficiencies that are owed in connection with the Class Members' CLEC contracts and to dismiss any pending lawsuits based on such deficiencies or balances. The Settlement Agreement also requires Capital One to send requests to the credit reporting agencies that any balance on the Class members' accounts be reported as zero and that the account should be reported as "paid as agreed."

Settlement Fund

Capital One will pay the sum of \$3,050,000.00 into a Settlement Fund pursuant to the Settlement Agreement. If the settlement is approved, the Settlement Fund will be used to provide a payment to Class Members, by check after deduction of a proportionate share for Class Counsel's attorneys' fees and expenses awarded by the Court. Members of the Balance Subclass – who are Class members in transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement – are entitled to a portion of \$2,900,000.00 of the Settlement Fund based upon the total amount paid on the Class member's account in excess of the principal amount financed in their transaction, after subtracting a proportionate share of attorneys' fees and costs. Members of the No Balance subclass – who are Class members in transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement – are each entitled to an equal portion of \$150,000 of the Settlement Fund after subtracting a proportionate share of attorneys' fees and costs. The precise amount of individual recoveries will be determined by formulas set forth in the Settlement Agreement. The Settlement Agreement can be reviewed at www.capitalonegapsettlement.com, or you can call Class Counsel to obtain a copy, at 410-825-2300.

Distribution of Remainder of Settlement Fund

Any monies that remain unclaimed or undistributed will not revert back to Capital One. Instead, they will be distributed to Court-approved non-profit 501(c)(3) institutions.

Cost of Administration

The administrative costs associated with distributing the notice to Class Members and the administration of the settlement will be paid by Capital One. The Court has appointed Strategic Claims Services as the Settlement Administrator.

Attorneys' Fees and Class Representative Award

Class Counsel has prosecuted this litigation, including an appeal to the U.S. Court of Appeals for the Fourth Circuit, without receiving any attorneys' fees to date, and without any assurance of receiving fees, except in the event of a successful judgment or settlement. Class Counsel also has advanced all of the costs necessary to prosecute this litigation. Given these circumstances, Class Counsel will ask the Court to award them fees and expenses to be paid from the Settlement Fund. The total benefit of the settlement to the Class includes not only the \$3,050,000.00 paid by Capital One into the Settlement Fund, but also substantial amounts in waived deficiencies and balances of Class members, plus an unknown but significant value attributable to Capital One's agreement to report all Class Members' accounts as "paid as agreed." Pursuant to the Settlement Agreement, Class Counsel will ask the Court to award their reimbursable costs from the Settlement Fund, plus up to one-third of the Settlement Fund as fees. The Court will conduct a hearing on the amount of attorneys' fees and expenses at a later date as part of the process of final approval of the settlement.

The Representative Plaintiff also intends to apply for an award in the amount of \$10,000 as compensation for his services in acting as the Class Representative in the lawsuit. Capital One has agreed to pay this amount to the Representative Plaintiff separate from the Settlement Fund – it will not diminish the relief to be obtained by other Class Members in any way. This award must still be approved by the Court.

Entry of Final Judgment and Release

The Settlement Agreement is subject to final approval by the Court. If the Court approves the settlement, the Class Members will be bound by the terms of the settlement and any orders from the Court related to the settlement, including dismissal with prejudice of all claims in the litigation against Capital One. If the Court approves the settlement, the Court will enter a judgment dismissing all claims against Capital One with prejudice. Under the terms of the Settlement Agreement, the Class Members will release Capital One with respect to the claims that were raised or could have been raised that relate to or arise out of the facts and circumstances pertaining to the automobile installment sales contracts at issue in this case. The release is intended to resolve all matters related or pertaining to the automobile installment sales contracts involved in this case as between Class Members and Capital One, its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors. The full text of the release is contained in the Settlement Agreement.

V. REASONS FOR SETTLEMENT

The Representative Plaintiff on the one hand, and Capital One on the other hand, have agreed on all of the terms of the proposed settlement through extensive arms-length negotiations between Class Counsel and counsel for Capital One. The Representative Plaintiff has entered into the proposed settlement after weighing the benefits of the settlement against the probabilities of success or failure in the lawsuit and against any delays that would result if the lawsuit proceeded to trial, and after trial, to appeal.

The Representative Plaintiff and Class Counsel have concluded that the proposed settlement is fair, reasonable and adequate. It provides substantial benefits to the Class, resolves complex issues without further prolonged litigation, provides the Class with significant individual and aggregate benefits, and is in the best interests of the Class.

Although Capital One denies any wrongdoing or liability whatsoever, Capital One believes that it is in its best interests to settle this lawsuit on the terms set forth in the Settlement Agreement in order to avoid the further expense and inconvenience in connection with the lawsuit.

VI. RIGHTS AND OPTIONS OF CLASS MEMBERS

You will be a member of the Class unless you request to be excluded (see below for information on how to exclude yourself from this settlement). Your interests as a member of the Class will be represented by the Representative Plaintiff and by the above-listed Class Counsel. You will not be billed for their services. Class Counsel will receive a fee only if the Court approves the Settlement Agreement, and the fee award will be set by the Court and paid from the Settlement Fund.

As a Class Member, you will be bound by any judgment or other final disposition of this case, including the release of claims and dismissal of the lawsuit with prejudice as provided in the Settlement Agreement. A summary of the effect of the Settlement Agreement, including the releases of claims, is outlined in Sections IV and IX of this notice.

You may file an objection to the settlement, and/or seek to appear, by yourself or through counsel, retained at your own cost, at the final approval hearing to be held in this case. You also may retain your own counsel to represent you at your own cost, and seek to appear individually or intervene

in the case. Please consult Sections VII and VIII for important deadlines and other requirements for objections, appearances, and intervention.

You may request exclusion and “opt-out” from the Class. If you elect to be excluded from the Class, you will not be bound by any judgment or settlement of the lawsuit, nor will you receive any of the benefits of this class action, including the payment to you of any money or any non-monetary benefits. You will retain and be free to pursue any claims that you may have on your own behalf. If you wish to exclude yourself from the Class, you **must** mail a written request for exclusion to the Settlement Administrator at: DeCohen v. Capital One Settlement, c/o Strategic Claims Services, P.O. Box 230, Media, PA 19063. Requests for exclusion do not need to be in any particular format, except that the request must state that you intend to “opt-out” or request “exclusion” from the Class, must be signed personally, and must contain the full name, current address, and telephone number of the person requesting exclusion. The written request for exclusion must be sent by U.S. mail, first class and postage prepaid, postmarked on or before March 31, 2014.

VII. FINAL APPROVAL HEARING

A final approval hearing will be held on the 11th day of April, 2014, at 10:00 a.m. before the Honorable William D. Quarles, U.S. District Court for the District of Maryland, Northern Division, 101 W. Lombard Street, Baltimore, MD 21201, for the purpose of determining whether the proposed settlement is fair, reasonable, and adequate and therefore should be finally approved. The hearing will also determine whether to award attorneys’ fees and other expenses to Class Counsel, whether to provide an additional award to the Representative Plaintiff as provided in the Settlement Agreement, and whether to enter a final judgment and dismiss the lawsuit. The hearing may be continued or adjourned without further notice other than announcement at the final approval hearing. The settlement may be approved with modifications, and without further notice, if consented to by the Representative Plaintiff and Capital One and their respective counsel in accordance with the terms of the Settlement Agreement.

MEMBERS OF THE CLASS WHO DO NOT OBJECT TO THE SETTLEMENT OR ANY OTHER MATTER TO BE CONSIDERED AT THE FINAL APPROVAL HEARING NEED NOT ATTEND THE FINAL APPROVAL HEARING OR TAKE ANY FURTHER ACTION.

VIII. RIGHT TO OBJECT TO SETTLEMENT, REQUEST INTERVENTION AND/OR APPEAR AT THE FINAL APPROVAL HEARING

If you do not exclude yourself from the Class, you may object to any aspect of the proposed settlement. If you do not exclude yourself from the Class, you also may seek to intervene in the case as a party. Any Class Member who objects to all or part of the proposed settlement and wants the Court to consider his or her objection, or who seeks intervention, must file such objection, or request for intervention, and all supporting briefs or other papers with the Clerk of the Court on or before March 31, 2014 at the following address: Office of the Clerk, U.S. District Court for the District of Maryland, Northern Division, 101 W. Lombard Street, Baltimore, MD 21201.

Any objection to the Settlement Agreement must set forth the full name, current address and telephone number of the person making objection and must include: (a) a written statement of the position that the objector wishes to assert; (b) a written statement of the grounds therefore; and (c) copies of any papers, briefs, or other documents that the objector wishes to submit in support of his/her position. Any request for intervention must be by motion and must be otherwise in compliance with Rule 24 of the Federal Rules of Civil Procedure. Copies of the objection and/or intervention and

supporting papers must also be mailed or hand-delivered to Class Counsel, Benjamin H. Carney, GORDON & WOLF, CHTD., 102 West Pennsylvania Avenue, Suite 402, Towson, MD 21204 and to the designated Counsel for Capital One, Bryan A. Fratkin, McGuireWoods LLP, One James Center., 901 East Cary St., Richmond, VA 23219. Any Class Member who intends to appear personally (or through separate counsel if a timely and proper Entry of Appearance is filed) at the final approval hearing for any reason whatsoever must file with the Clerk of the Court, at the address listed above, a Notice of Intention to Appear, in no particular form. The Notice of Intent to Appear shall be filed on or before March 31, 2014, and copies of the Notice of Intention to Appear must be mailed or hand delivered to Class Counsel and to Counsel for Capital One, at the addresses listed above. Any Class Member who does not file and serve a Notice of Intention to Appear will be prohibited from speaking at the final approval hearing concerning this settlement. Any Class Member who does not file an objection in the time and manner described above is forever prohibited from raising any objection to such matters in the event that the settlement is approved. Any Class Member who does not file a request for intervention in the time and manner described above is forever prohibited from seeking intervention in this lawsuit.

IF YOU DO NOT OBJECT TO THE SETTLEMENT, AND DO NOT WISH TO BE HEARD ON ANY OTHER MATTER TO BE PRESENTED TO THE COURT AT THE FINAL APPROVAL HEARING, YOU NEED TAKE NO FURTHER ACTION IN ORDER TO BE ENTITLED TO PARTICIPATE IN THE SETTLEMENT.

IF YOU HAVE MOVED AND/OR CHANGED YOUR MAILING ADDRESS SINCE ENTERING INTO YOUR VEHICLE FINANCING CONTRACT, HOWEVER, YOU WILL NEED TO ADVISE CLASS COUNSEL OF THE FACT BY WRITING TO ONE OF THEM AT THE ADDRESSES REFERENCED IN THIS NOTICE.

IX. SCOPE OF SETTLEMENT PROPOSAL

If the settlement is approved, the terms of the Settlement Agreement, including the releases outlined in Section IV of this Notice, will be final and binding upon, and shall inure to the benefit of: (a) all Class Members, except those who request timely and proper exclusion from the Class; (b) any heir, executor, administrator, representative, assignee, or other party standing in the shoes of any Class Member; (c) Capital One, as well as its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors; and (d) all beneficiaries of the release stated in the Settlement Agreement.

X. INFORMATION THAT YOU MUST INCLUDE IN ANY DOCUMENT THAT YOU SEND REGARDING THE CASE

In sending any document to the Court, to Class Counsel, to the Settlement Administrator, or to Counsel for Capital One, it is important that both your envelope and any document inside contain the following case name and identifying number: *Decohen v. Capital One, N.A.*, Civil Action No. 1:10-cv-03157-WDQ. In addition, you must include your full name, address, and telephone number at which you can be reached.

XI. FOR MORE INFORMATION

If you have any questions concerning the matters dealt with in this notice, please direct your inquiries in writing to one of the following Class Counsel representing the Class:

Benjamin H. Carney
Martin E. Wolf
Gordon & Wolf, Chtd.
102 W. Pennsylvania Ave., Suite 402
Towson, Maryland 21204

Mark H. Steinbach
Of Counsel to O'Toole Rothwell
1350 Connecticut Avenue, N.W., Ste 200
Washington, D.C. 20036

XII. PLEADINGS AND OTHER RECORDS

You may review the Complaint, Settlement Agreement, and Preliminary Approval Order in this case at www.capitalonegapsettlement.com. The pleadings and other records in this litigation may be examined and copied during regular office hours at the Office of the Clerk, U.S. District Court for the District of Maryland, Northern Division, 101 W. Lombard Street, Baltimore, MD 21201.

PLEASE DO NOT TELEPHONE THE CLERK'S OFFICE OR THE JUDGE'S CHAMBERS.

DATE: FEBRUARY 12, 2014.

Clerk of Court,
U.S. District Court for the District of Maryland