## 'First Strike' lawsuits reach different stages in court

## PCGS settles suit, but NGC still facing trial

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One lawsuit against a grading service over the use of the "First Strike" designation has been settled, but a similar suit against another grading service faces trial. Charles Lipcon, representing Thomas Francisco as the plaintiff, on Nov. 7 filed in the United States District Court, Southern District of Florida in Miami a classaction lawsuit against Numismatic Guaranty Corporation of America and, two days later, a similar suit, now dismissed, against Collector's Universe Inc. doing business as Professional Coin Grading Service.

Both suits use similar language to allege that the grading services violated state laws by labeling American Eagle gold and silver bullion coins "First Strike" or "First Strikes."

The suit against NGC alleges the company is engaged in violating the Florida Deceptive and Unfair Trade Practices Act, and the suit against Collector's Universe claimed violation of the California Unfair Practices Act.

Parties in the lawsuit against Collector's Universe on March 30 filed a notice of voluntary dismissal after reaching a settlement agreement. Lipcon would not discuss the terms of the settlement, and Collector's Universe did not return Coin World's telephone call.

A trial date of Feb. 19, 2008, has been set in the suit against NGC.

NGC answered the complaint on Jan. 17, 2007. In its response, NGC admits that, in 2005 and 2006 it graded, "a number of silver and gold United States bullion coins with the additional designation of 'First Strikes," but stated that NGC customers submitting the coins for that designation "were fully aware of the published NGC definition and criteria and would only receive the designation if the criteria were met."

Additionally, NGC answers the complaint by noting that it does not "define its program of 'First Strikes' to constitute the U.S. Mint's first striking of a particular die."

The firm uses the term 'First Strikes,' and states that, "therefore, plaintiff's purchase of a 'First Strike' coin would not have been one graded by the defendant."

NGC's response denies the plaintiff's claim that the "First Strikes" designation "has been and is currently being used by sellers of coins as a promotional tool in order to promote and sell these coins as being special or different when in fact they are not special or different," and answers that "NGC does not sell or market coins and does not control marketplace conditions. Nor does NGC control what its customers may pay or receive for their coins."

NGC denies the complaint's assertion that it labeled "First Strikes" coins to allow "its

customers to use the designation as a marketing tool and as a means to charge more money to the public."

NGC denies that its actions were in violation of the Florida Deceptive and Unfair Trade Practices Act, and denies that the case is a class action by noting that, "To the extent that the class action contains citizens of states other than Florida," then the laws of each state apply to the respective citizens' claims.

NGC also denies that there are any financial damages to the "putative class" and stated that "the value of 'First Strikes' is a function of marketplace conditions which, depending on a number of factors, could mean that purchasers thereof may actually have made money as opposed to plaintiff's assumptions that purchasers thereof lost money."

NGC discontinued designating certain U.S. bullion coins as "First Strikes," the company announced Dec. 14, and now offers the designation "Early Releases" for bullion coins released by the U.S. Mint during their first month of issue (Coin World, Jan. 1 issue).

Scott Schechter, director of marketing for Certified Collectibles Group, parent company of NGC, told Coin World for the article in the Jan. 1 issue: "With the pending litigation, we are not in a position to comment further." But he said NGC did make the change "of its own accord ... and we feel that Early Releases best meets the needs of the marketplace."

Schechter said in the Dec. 14 press release from NGC that the First Strikes designation was dropped because "an evaluation ... in the marketplace conducted by NGC suggests that having two overlapping pedigrees to identify coins of early release may create confusion in the marketplace. ..."

Eligible for the "Early Releases" designation are bullion coins from the American Eagle and American Buffalo programs, of all denominations and compositions.

To qualify for the Early Releases designation, coins must be received by NGC within 30 days of their first release by the Mint, or documented as being received by an NGC-approved depository within the same period.

Coins sent directly to NGC do not need to be accompanied by original packaging or shipped in sealed Mint boxes but must arrive within this period. The request must be noted on the submission invoice, and additional service fees apply for the special label and document recording.

The criteria for "First Strikes" coins were identical.

Coins receiving the designation will be encapsulated in an NGC holder with special label, with the words "Early Releases" appearing beneath the year of issue and denomination on the NGC label.