

monthly litigation update

NOVEMBER 2007

This update is a summary of civil decisions of significance in the consumer financial services industry from federal courts throughout the United States that were released and made available by Westlaw during the previous month. This update is a complimentary service offered by Burr & Forman LLP and is distributed during the first week of each month via email. Individuals may subscribe/unsubscribe to this monthly update by sending an email to financialservices@burr.com. Each update is prepared by the following members of Burr & Forman's Financial Services Practice Group:



Alan D. Leeth
Phone: (205) 458-5499
E-Mail: aleeth@burr.com

Alan is a partner in Burr & Forman's Financial Services Practice Group and is licensed to practice law in Alabama, California, Tennessee and the District of Columbia.



R. Frank Springfield
Phone: (205) 458-5187
E-Mail: fspringf@burr.com

Frank is an associate in Burr & Forman's Financial Services Practice Group and is licensed to practice law in Alabama, Florida, Mississippi and Tennessee.



Jason R. Bushby
Phone: (205) 458-5260
E-Mail: jbushby@burr.com

Jason is an associate in Burr & Forman's Financial Services Practice Group and is licensed to practice law in Alabama and Mississippi.

With offices in Alabama, Georgia, Mississippi and Tennessee and more than twenty-five attorneys, Burr & Forman's Financial Services Practice Group has served the needs of its financial services clients in over twenty-seven states. Our attorneys are licensed in twelve different states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and West Virginia) and the District of Columbia. Therefore, while Burr & Forman has a strong regional presence in the southeast, the attorneys in Burr & Forman's Financial Services practice group have both regional and national experience.

SUPREME COURT DECISIONS

No civil decisions of significance in the consumer finance industry reported as of the date of publication.

.....

1ST CIRCUIT DECISIONS



FAIR DEBT COLLECTION PRACTICES ACT (ACTUAL DAMAGES & ATTORNEY'S FEES)
Malone v. Hecker, 2007 WL 4200951 (D. Mass. Nov. 27, 2007)

Plaintiff brought suit against the defendants alleging violations of the Fair Debt Collection Practices Act (FDCPA) and Massachusetts General Laws ch. 93A. The jury awarded the plaintiff \$1,000 in statutory damages and \$4,000 in actual damages for the FDCPA claim. The judge then awarded \$4,000 in actual damages for the Chapter 93A claim. The defendants moved to vacate the \$4,000 actual damages award for the Chapter 93A claim alleging that the award was duplicative of the FDCPA actual damages award. The plaintiff then moved for attorney's fees and costs under both statutes in the amount of \$26,300. The court first stated that the defendants were correct in arguing that an award of \$4,000 under both the FDCPA and Chapter 93A would be duplicative. The court stated that the defendants' motion to vacate the award was granted because only one award could be made. However, the court then stated that based on the court's determination that Chapter 93A was violated, the Chapter

93A award was trebled to \$12,000. The court stated that the plaintiff was still entitled to the FDCPA statutory damages, so the plaintiff's total recovery was increased to \$13,000. The court then stated that the plaintiff's request for attorney's fees was excessive. The court held that the two claims were not complex and both arose out of the same facts. The court reduced the trial preparation time and the jury instruction time by 50%. The court then held that the attorney's rate of \$235/hour and the paralegal's rate of \$115/hour were both reasonable for this type of litigation. Therefore, the court awarded the plaintiff \$18,393.45 in attorney's fees and expenses, for a total award of \$31,393.45.

.....

2ND CIRCUIT DECISIONS



TRUTH-IN-LENDING ACT & FEDERAL ARBITRATION ACT (ARBITRATION PROVISION)

Dumanis v. Citibank (South Dakota), N.A., 2007 WL 3253975 (W.D.N.Y. Nov. 2, 2007)

Plaintiff, on behalf of himself and others similarly situated, filed suit against the defendant credit card company alleging various violations of the Truth-in-Lending Act (TILA) and other state consumer protection laws. The plaintiff had entered into a card agreement with the defendant that contained a South Dakota choice-of-law provision. The defendant later mailed the plaintiff an amendment to the agreement which stated that either party could elect arbitration to resolve any dispute. The arbitration agreement also eliminated the consumer's right to participate in a class action lawsuit. The plaintiff argued that the arbitration provision should not be enforced because it was unconscionable. Additionally, the plaintiff argued that the card agreement was a contract of adhesion and that the agreement was unfairly one-sided because it primarily limited the rights of cardholders. The court first held that the card agreement's choice-of-law provision must be used and the court must defer to South Dakota law to determine the validity of the arbitration agreement. The court then held that while the card agreement was a contract of adhesion, neither the arbitration clause as a whole, nor the class action waiver provision, were unconscionable. The court stated that because the plaintiff had the ability to opt out of the arbitration clause and had

presented no evidence of unconscionability, neither agreement was unconscionable. Therefore, the court granted the defendant's motion to compel arbitration.

FAIR DEBT COLLECTION PRACTICES ACT (CLASS CERTIFICATION)

Kalish v. Karp & Kalamotousakis, L.L.P., 2007 WL 4048559 (S.D.N.Y. Nov. 13, 2007)

Plaintiff, on behalf of herself and others similarly situated, filed suit alleging that the defendant law firm violated 15 U.S.C. §§ 1692e(3) and 1692g of the Fair Debt Collection Practices Act (FDCPA) when it informed consumers that a dispute of a debt owed to the law firm could only be made in writing. The plaintiff then moved to certify a class of approximately 700 individuals who received the defendant's allegedly illegal form letter. The defendant conceded all class issues except for adequacy of class counsel and superiority. The defendant argued that the plaintiff's counsel was not adequate because of his losses in FDCPA actions in federal court. The court held that adequacy was not equal to success and that the plaintiff's counsel was experienced in FDCPA litigation and was adequate for the purposes of Federal Rule of Civil Procedure 23. The defendant then argued that a class action lawsuit was not superior to individual claims because the litigants would likely receive more if each brought their claims individually. The court stated that the defendant's argument was not persuasive because without class action, many of the defendant's violations would likely go unnoticed. Therefore, the court stated that this was exactly the type of case for which class action lawsuits were created. Additionally, the court stated that any litigant who wished to litigate his or her own claim could opt out and do so individually. The court then granted the plaintiff's motion for class certification.

FAIR DEBT COLLECTION PRACTICES ACT & FEDERAL ARBITRATION ACT (CREDITOR APPLICABILITY)

Nichols v. Washington Mut. Bank, 2007 WL 4198252 (E.D.N.Y. Nov. 21, 2007)

Plaintiff had a mortgage loan agreement with the defendant bank that was secured by her co-op apartment. When it appeared that the plaintiff may default on her loan, the defendant bank referred the plaintiff to an agency called National Foreclosure Relief, which represented that it would assist the plaintiff in avoiding foreclosure of her apartment. The plaintiff's contract with National Foreclosure Relief contained an arbitration agreement that stated that any controversy between the parties should be settled in arbitration. The defendant bank then foreclosed on the plaintiff's apartment. The plaintiff filed suit against the bank and National Foreclosure Relief alleging violations of the Fair Debt Collection Practices Act (FDCPA) and other state consumer protection laws. The

defendants filed a motion to dismiss. The defendant bank first argued that because it was a creditor, and not a debt collector, it could not be held liable under the FDCPA. The court agreed, and stated that the bank also did not fit into the exception that the creditor used another name to collect its own debt, which would allow it to be held liable under the FDCPA. The court stated that the critical fact was that there was no evidence that National Foreclosure Relief was actually collecting the debt on behalf of the defendant bank. Additionally, the plaintiff made efforts to contact National Foreclosure Relief and the court stated that the FDCPA was intended to protect consumers from communications initiated by debt collectors, not consumers. Therefore, the plaintiff's FDCPA claims against the defendant bank were dismissed. National Foreclosure Relief then filed a motion to dismiss or stay pending arbitration. The court first stated that the Federal Arbitration Act (FAA) reflects a Congressional policy in favor of enforcing arbitration in contracts. The court then determined that because the action was brought in New York, and the contract is silent to a choice-of-law provision, that New York law should apply. Next, the court determined that the particular challenges brought by the plaintiff as to whether the arbitration agreement ought to apply should be decided by a court. The court then ruled that there was an agreement between the parties. The plaintiff signed an arbitration agreement and should have been aware of the arbitration clause in the contract. Also, the court said that mandatory arbitration that binds both parties is generally not substantively unconscionable. The plaintiff identified no special aspect of the arbitration agreement that rendered it unconscionable. Additionally, the court stated that even granting all inferences in the plaintiff's favor, the agreement was not procedurally unconscionable. Therefore, the court granted National Foreclosure Relief's motion to stay proceedings pending arbitration.

.....

3RD CIRCUIT DECISIONS



REAL ESTATE SETTLEMENT PROCEDURES
ACT (CLOSING COST CREDITS)
Capell v. Pulte Mortgage L.L.C., 2007 WL 3342389 (E.D.
Pa. Nov. 7, 2007)

Plaintiff purchased a home from the defendant. The purchase agreement stated that if the plaintiff used certain real estate settlement service providers affiliated with the

defendant that the plaintiff would receive a \$25,000 closing cost credit. The plaintiff did use the specified providers and then brought an action against the home seller and lender alleging that the defendant required her to use certain providers, thereby violating the Real Estate Settlement Procedures Act (RESPA). The defendants argued that the claims should be dismissed for three reasons. First, the defendant argued that the plaintiff did not suffer an injury in fact, and therefore, lacked standing to sue because she did not allege that the defendant overcharged her for any settlement cost. The court held that the plaintiff did have standing to bring an action because the plaintiff did not need to allege that there was an overcharge of fees. The court stated that the RESPA allows individuals to police the marketplace in order to ensure impartiality of referrals, therefore, suits without overcharges advance Congress's goals under RESPA. The defendant then argued that the plaintiff had failed to allege critical elements of her claims. Specifically, the plaintiff had not asserted a kickback or referral agreement; failed to assert that her settlement service fees were split; and failed to sue the seller of the property as RESPA requires. The court first held that through the alleged facts, one could infer the existence of an agreement or understanding between the entities enough to satisfy the agreement requirement. Second, the court held that the plaintiff did fail to show that there was a fee splitting between the agencies. The court stated that although the plaintiff alleged there was a per se violation of the statute which made fee splitting obvious, that did not mean that the plaintiff did not have to satisfy the elements of a prima facie case. Third, the court held that although the plaintiff sued the national corporation that sold the house, she failed to sue the actual state entity of that corporation whose name was on the purchase agreement. Because she failed to sue the seller, she could not continue a claim under section 9 of RESPA. Finally, and most importantly, the defendant then argued that the RESPA does not prohibit closing cost credits because such credits do not require the buyer to use the affiliated services. The court agreed, holding that RESPA only prohibited "required use," which has been defined by HUD as an instance in which a person must use a particular provider in order to have access to some service or property. The court held that the plaintiff was essentially alleging that the credit was so large that she could not turn it down and this was not enough to satisfy the elements in order to prove a RESPA violation. Therefore, the court granted the defendant's motion to dismiss.

TRUTH-IN-LENDING ACT (RES JUDICATA)
White v. Long Beach Mortgage, 2007 WL 4079443 (E.D.
Pa. Nov. 7, 2007)

Plaintiff entered into a refinancing agreement on two properties with the defendant mortgage company. After the defendant failed to provide the plaintiff with a date by which she must have exercised her right to cancel, the

plaintiff notified the defendant that she was rescinding the contract. The defendant refused to allow rescission and the plaintiff brought this suit alleging that the defendant violated the Truth-in-Lending Act (TILA). Both parties filed motions for summary judgment. The defendant alleged that because the plaintiff failed to challenge the foreclosure and subsequent sale of the property in state court that the plaintiff's current claims were compulsory counterclaims and should be precluded by the Rooker-Feldman doctrine and the doctrine of res judicata. The court stated that the Pennsylvania res judicata doctrine must be applied. The court held that because, in Pennsylvania, counterclaims are permissive, the doctrine of res judicata does not preclude any claims that the plaintiff may have. However, the court held that because the state court issued a judgment of foreclosure on the plaintiff's property, the federal court would be voiding that judgment if it found in the plaintiff's favor on the TILA rescission claim; therefore, the court held that the Rooker-Feldman doctrine prohibited the court from allowing the plaintiff's rescission claim to proceed and granted summary judgment on the TILA claim.

TRUTH-IN-LENDING ACT (TILA DISCLOSURE DELAYS)

Colanzi v. Sav. First Mortgage, L.L.C., 2007 WL 3407134 (E.D. Pa. Nov. 15, 2007)

Plaintiff entered into an agreement to refinance her home with the defendant bank. The defendant had the plaintiff sign documents that contained the necessary Truth-in-Lending Act (TILA) requirements, but did not give the plaintiff copies of the documents on the day of the signing. Instead, the defendant sent the plaintiff copies in the mail several weeks later. The plaintiff argued that the defendant's delay in sending the documents amounted to a failure to present the documents at all, an action which, under the TILA, would authorize the plaintiff to rescind the agreement within three years. The defendant argued that the late presentation of the documents was not the same as never sending the documents and filed a motion to dismiss the plaintiff's claim. The court held that TILA allows for a three-day right to rescind following the consummation of the transaction or the delivery of the information. The court stated that the TILA statute specifically contemplates the situation where the documents are not provided immediately and allows for a three-day rescission period after the date they are delivered. Therefore, because the documents were ultimately provided to the plaintiff, the court granted the defendant's motion to dismiss the plaintiff's TILA complaint.

TRUTH-IN-LENDING ACT (NOTICE OF FEES, RESCISSION & STATUTE OF LIMITATIONS)
In re Meyer, 2007 WL 4209094 (Bkrtcy. E.D. Pa. Nov. 29, 2007)

Plaintiffs filed suit against a mortgage company, home loan corporation and financial group alleging violations of the Truth-in-Lending Act (TILA) and other state consumer protection laws. All parties filed motions for summary judgment. Plaintiff first alleged that the lender-paid broker's commission – known in the industry as a yield spread premium – should have been separately disclosed as a finance charge. The court held that in the district, a yield spread premium is not required to be separately disclosed as a finance charge because it is already part of the interest component; therefore, there was no TILA violation on that basis. The plaintiffs' next contention was that their right to cancel the loan was not sufficiently disclosed to them. TILA requires that a creditor shall deliver two copies of the notice of the right to rescind to each consumer. The court said that the plaintiffs had presented adequate evidence that they did not receive the required disclosures and it was sufficient to survive a motion for summary judgment. The home loan corporation, which did not create the notices of the right to rescind, argued that it should not be liable for any mistakes created by the mortgage company. The court agreed, holding that the copy reviewed by the home loan corporation was not deficient and it did not have a duty to inspect every document sent to the plaintiffs; therefore, the TILA claim was dismissed as to its liability. The mortgage company then argued that the claim was stale for the purposes of collecting damages because of the one-year statute of limitations. The court agreed holding that the loan closed on May 13, 2004, but the case was not filed until February 5, 2007, therefore barring monetary damages for the first count. The court then held that it was too late for the plaintiffs to attempt to rescind their loan, which is allowed for three years after finding a TILA deficiency, they alerted the prior holders of the loan, not the current holder. However, the court did hold that because the defendants were not clear in notifying the plaintiff of the proper owner of the loan, the plaintiffs could seek damages for their attempts in trying to rescind the loan.

.

4TH CIRCUIT DECISIONS



TRUTH-IN-LENDING ACT (ATTORNEY'S FEES)

Duncan v. GE Consumer Fin., Inc., 2007 WL 3275152 (W.D. Va. Nov. 5, 2007)

Plaintiff filed suit against the defendant lender alleging that the defendant committed various violations of the Truth-in-Lending Act (TILA) and other state consumer protection laws. The defendant did not submit an answer, therefore, the court granted the plaintiff's motion for a default judgment. After the court awarded the maximum possible damages under TILA and state law, the plaintiff requested attorney's fees and costs in the amount of \$4,553.69. The court first held that the attorney's fee of \$250/hour for his services, and \$75/hour for his paralegal was reasonable after surveying similar cases in the district. The court then reduced the hour total, stating that any hours worked on the plaintiff's state law claims that were noncompensable could not be accessed to the defendant. After making the change, the court awarded \$3,938.69 in attorney's fees and costs.

.....

5TH CIRCUIT DECISIONS



No civil decisions of significance in the consumer finance industry reported as of the date of publication.

.....

6TH CIRCUIT DECISIONS



TRUTH-IN-LENDING ACT (RESCISSION)

Countrywide Home Loans, Inc. v. Waldschmidt, 2007 WL 3287138 (M.D. Tenn. Nov. 5, 2007)

Debtors entered into a refinancing agreement with the lender in late July of 2005 that used the debtor's property as security for the loan. The money from the agreement was dispersed on August 3, 2005 and was used to pay off two debts owed to two financial institutions that had deeds of trust encumbering the plaintiff's property. On August 26, 2005 the debtors filed for bankruptcy under Chapter 7 of the Bankruptcy Code. The trustee then filed an action against the lender to avoid the liens as preferential transfers pursuant to 11 U.S.C. § 547. The Bankruptcy Court granted summary judgment in favor of the trustee, avoiding the liens. The court held that the transfers were voidable because they were made on account of an antecedent debt – that is, a debt that was owed prior to the transfers – finding that the transfers had been made at the time of perfection. The lender appealed that order to this court. The lender argued that the transfers were not for or on account of an antecedent debt owed by the debtor before the transfer was made. If so, then the transfers are not voidable. The issue was when the mortgage transfers were made. There were two possibilities. Either the mortgage transfer was made on the date the agreement took effect, or on the date when the security interests were perfected, which was August 10. If the transfers were made on the date that the agreement took effect, then the transfers would not have been made on account of an antecedent debt and, therefore, would not be voidable. At the time of the relevant facts of this case, Section 547 provided that if a lender perfected the security interest at or within ten days of the date when the transfer took effect, then the transfer is deemed to have been made when the transfer took effect. If the transfer were perfected at any subsequent time, however, it is deemed to have been made at the time of perfection. The trustee argued that the agreement took effect on July 29, the date when the debtors signed the deeds of trust. The lender contended that that the transfer did not take effect until after the debtors three-day right of rescission under

Regulation Z expired, which would have been August 2. The court used Sixth Circuit precedent and held that because the debtors had the ability to cancel the agreement, and did not receive the money until after the right of rescission passed, that the loan did not take effect until August 2. Therefore, the transfers were not made on an antecedent debt and are not voidable by the trustee. The court reversed the judgment of the Bankruptcy Court and entered judgment in favor of the lender.

FAIR DEBT COLLECTION PRACTICES ACT (VARIOUS COLLECTION PRACTICES)

Lovelace v. Michaels Assoc., Inc., 2007 WL 3333019 (E.D. Mich. Nov. 9, 2007)

Plaintiff filed suit against the defendant debt collector alleging violations of the Fair Debt Collection Practices Act (FDCPA), which related to the defendant's attempt to collect on a delinquent credit card debt owed by the plaintiff. The plaintiff brought seven separate FDCPA claims. First, the plaintiff stated that the defendant attempted to contact the plaintiff at his place of employment, instead, the plaintiff's father answered and represented himself as the plaintiff. The plaintiff alleged that the defendant violated 15 U.S.C. § 1692c(b) because it discussed the plaintiff's debt with someone other than the plaintiff. The court held that while it appeared the defendant did violate the statute, the communication constituted a bona fide error because the defendant did not intend to communicate with the plaintiff's father and the defendant believed it was speaking to the plaintiff. Additionally, by asking the interlocutor to identify himself, the defendant did have procedures reasonably adapted to prevent this type of mistake. Therefore, the court granted the defendant's motion for summary judgment on the § 1692c(b) claim. Second, the defendant attempted to collect a sum of over \$3,000 from the plaintiff's checking account in order to settle the debt. The collection was blocked because the plaintiff had insufficient funds. The court held that there was a genuine issue of material fact as to whether the defendant violated § 1692f(1) by attempting to draw a check from the plaintiff's account without authorization, and therefore, the court denied the defendant's motion for summary judgment. Third, because the plaintiff failed to present any evidence that the defendant added additional fees to the plaintiff's account, in violation of §1692f, the court granted the defendant's motion for summary judgment. Fourth, the court held that because the defendant had made statements that a least sophisticated consumer could reasonably believe were made in an attempt to threaten a lawsuit against the plaintiff, and then did not sue the plaintiff, there is a genuine issue of material fact as to whether the defendant violated § 1692e(5). Fifth, the court held that while the plaintiff may have had a claim that the defendant violated § 1692f(2) by not notifying them that they were going to deposit a \$3,000 check, because the plaintiff did not raise the claim in his complaint, the defendant's motion for

summary judgment had to be granted in regard to his claim under §1692f(2). Sixth, the court held that there was a genuine issue of material fact in regard to whether the defendant placed phone calls specifically to harass or annoy the plaintiff in violation of § 1692d. The plaintiff alleged that the defendant threatened the plaintiff with jail time and called his number repeatedly after the plaintiff hung up. Therefore, the court denied the defendant's motion for summary judgment in regard to the plaintiff's § 1692d claim. Finally, the court held that the defendant did not violate § 1692e(11) when the defendant failed to correctly identify itself as a debt collector when accidentally placing the call to the plaintiff's father. Section 1692e(11) requires that the identification only need to be made to the consumer, and because the plaintiff's father was not the consumer, § 1692e(11) is inapplicable and the court granted summary judgment in favor of the defendant on the § 1692e(11) claim. In conclusion, the court granted the defendant's motion for summary judgment in part and denied it in part.

FAIR CREDIT REPORTING ACT & EQUAL CREDIT OPPORTUNITY ACT (DEFINITION OF CREDITOR)

Fultz v. Lasco Ford, Inc., 2007 WL 3379684 (E.D. Mich. Nov. 13, 2007)

Plaintiff visited two separate automobile dealerships and completed credit applications. Both dealerships accessed the plaintiff's credit report and then denied her credit. Neither dealership issued an adverse action notice. The plaintiff brought suit against both dealerships alleging that they failed to issue adverse action notices as required by the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA). All parties filed motions for summary judgment. The defendant dealerships argued that they were not creditors as defined by either the ECOA or the FCRA. The court agreed and held that the dealerships were not creditors for several reasons. Both dealerships only forwarded the credit applications on to other lenders, neither had a practice of unilaterally deciding not to forward credit applications to any lenders without notice to credit applicants. The dealerships stated that the only time they send adverse action letters to consumers is when the dealership decides not to submit the application to lenders. The court also stated that selecting creditors to whom applications will be sent does not make one a creditor. The court then held that if the dealers send at least one application to a lender, there is another party that can provide an adverse action notice to the consumer. Because the dealers did send the applications to lenders, there is no responsibility for them to send adverse action notices to consumers, which precludes liability under 15 U.S.C. §1691(D)(2) of the ECOA. The court then held that because an adverse action under the ECOA is the same as an adverse action under the FCRA, the defendants are also not creditors under the FCRA. The court denied the plaintiff's motion for summary judgment, granted the

defendant's motion for summary judgment and dismissed the plaintiff's claims.

FAIR DEBT COLLECTION PRACTICES ACT
(UNFAIR DEBT COLLECTION PRACTICES)
Crain v. Pinnacle Fin. Group of Minn., Inc., 2007 WL
3408540 (E.D. Mich. Nov. 14, 2007)

Plaintiff filed suit against the defendant debt collector alleging various violations of the Fair Debt Collection Practices Act (FDCPA). The defendant filed a motion for summary judgment. The plaintiff first argued that she never received letters containing notice of the debt collection efforts and FDCPA disclosures. After the defendant presented evidence of sending the letters, the court held that there is no requirement that the defendant must prove that the plaintiff received the letters and evidence that the letters were sent was enough to satisfy the FDCPA. Therefore, the court granted summary judgment as to the plaintiff's inadequate notice claims under 15 U.S.C. § 1692a(1) and (2). Additionally, because the plaintiff took three months to respond with a request to verify the plaintiff's debt, the court concluded that the defendant had no duty to verify the debt because more time had passed than was allowed under the FDCPA. Therefore, the court granted summary judgment for the defendant in regard to the § 1692g(b) claim. The plaintiff also claimed that the defendant violated § 1692f by using unfair or unconscionable means to collect a debt. The plaintiff stated that the defendant informed the plaintiff that her credit would be compromised if she didn't pay the amount that she owed and that this warning violated the FDCPA. The court held that this allegation failed even to approach unfairness or unconscionability. The court stated that failure to pay a bill would affect a person's credit history and the allegation bore no resemblance to those prohibited by § 1692f. Also, the court held that the plaintiff's bare assertion that the defendant called frequently was not enough evidence to prove that the defendant called with an intent to annoy, abuse or harass as is prohibited by § 1692d(5). The court also held that the defendant did not violate § 1692c(a)(3) by calling the plaintiff on her cell phone, which acted as a business number. The court reasoned that it was doubtful Congress intended to extend the prohibition on calling a place of employment to a cell phone because the phone is portable and not confined to any place. Finally, the court held that the plaintiff's only claims to survive were those under § 1692d which prohibit a debt collector using profane language and require that the debt collector identify itself at every call. The court stated that the determination of the validity of these claims would require a determination of the plaintiff's credibility as a witness, and therefore, there was a genuine issue of material fact as to the § 1692d claims. The defendant's motion was granted in part and denied in part.

TRUTH-IN-LENDING ACT & REAL ESTATE
SETTLEMENT PROCEDURES ACT (RES
JUDICATA, COLLATERAL ESTOPPEL AND
RULE 11 SANCTIONS)
Lund v. Citibank (West) FSB, 2007 WL 3408468 (E.D.
Mich. Nov. 14, 2007)

Plaintiff defaulted on a mortgage loan with the defendant bank and the defendant instituted foreclosure proceedings. The state court entered a judgment of \$771,702 for the defendant and granted foreclosure. The plaintiff appealed the decision to the Michigan Court of Appeals. The plaintiff then filed this action alleging that the defendant violated several provisions of the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The Michigan Court of Appeals then affirmed the decision of the lower circuit court and confirmed the foreclosure sale. The defendant filed a motion to dismiss this federal action and requested Rule 11 sanctions. The plaintiff alleged sixteen violations of the TILA and four violations of the RESPA. Without going into detail on the individual TILA claims, the court stated that many of the issues the plaintiff sought to litigate were decided in the state court foreclosure action and were barred by the doctrine of res judicata. The court did state that the claims would not have been barred by the Rooker-Feldman doctrine because the doctrine may only be applied if the federal district court complaint is filed after the state court case had become final. In the instant case, the complaint was filed while the foreclosure action was still being appealed in state court. The court then held that the claims that were not barred by res judicata were still barred by collateral estoppel. The court held that the issues concerning the foreclosure action were actually litigated and determined by a valid and final judgment in the state action. Additionally, the plaintiff had a full and fair opportunity to litigate the issues and did respond to the allegations made against him in the state court. Therefore, the plaintiff was precluded from pursuing the claims he rose in the instant case concerning his mortgage note and the foreclosure of his property. Finally, the court held that because the plaintiff continued to pursue his case after having been provided with the 21-day safe harbor opportunity to voluntarily dismiss it, he violated Rule 11 of the Federal Rules of Civil Procedure. The court awarded the defendant its costs and attorneys fees incurred in defending the action.

• • • • •



**FAIR CREDIT REPORTING ACT
(RETROACTIVE APPLICABILITY)**

Killingsworth v. HSBC Bank Nevada, N.A., 2007 WL 3307084 (7th Cir. Nov. 9, 2007)

Plaintiffs both alleged that the defendants violated the Fair Credit Reporting Act (FCRA). Plaintiffs' claims were dismissed in district court because of the Fair and Accurate Credit Transactions Act of 2003 (FACTA), which eliminated enforcement of certain FCRA provisions by private civil suit. Both plaintiffs' alleged that the amendment, which was effective December 1, 2004 impaired rights that they possessed prior to the new statute's effective date, and therefore, had an impermissible retroactive effect if applied in their cases. The court first held that the defendants' argument that FACTA should be applied from the date it was enacted is incorrect. The court stated that the date FACTA became effective is the date that should be considered for retroactivity purposes. The court then held that because enforcing the FACTA provision on claims that arose between the enacted deadline and the effective deadline would impair a preexisting substantive right, the amendment would have an impermissible retroactive effect on claims that accrued prior to its December 1, 2004 date. The court held that both plaintiffs' claims could proceed and reversed the decision of the lower courts.

**REAL ESTATE SETTLEMENT PROCEDURES
ACT (APPLICABILITY)**

Sharbaugh v. First Am. Title Ins. Co., 2007 WL 3307019 (N.D. Ill. Nov. 2, 2007)

Plaintiff brought suit against the defendant title insurance company alleging that the defendant violated the Real Estate Settlement Procedures Act (RESPA) and other state laws when it gave referral fees to attorneys who recommended the defendant's services. The defendant filed a motion for judgment on the pleadings alleging that the plaintiff did not state a viable RESPA claim because he failed to allege that his loan was a federally regulated mortgage loan as required by RESPA. In response to the defendant's motion, the plaintiff submitted the HUD-1

settlement statement for his loan which stated a lender. Additionally, the plaintiff submitted the lender's 2006 10-K Form that the lender filled out with the Securities and Exchange Commission. The court took judicial notice of the 10-K form, but not the HUD-1 form. The court held that because there was no basis for the court to infer that the listed lender was actually the lender on the plaintiff's property, the plaintiff did not properly allege that his mortgage loan was federally-regulated within the meaning of RESPA and the defendant's motion on the pleadings was granted.

**TRUTH-IN-LENDING ACT (REQUIRED
DISCLOSURES)**

Muro v. Target Corp., 2007 WL 3254463 (N.D. Ill. Nov. 2, 2007)

Plaintiff had an account with the defendant retailer for an in-store credit card that she used in 1998. The plaintiff paid the balance in full and then asked for the account to be closed in 1999. In 2004, the plaintiff received an unsolicited credit card from the defendant that only required the plaintiff to activate the card. The plaintiff did not activate the card but instituted this lawsuit alleging that the defendant violated the Truth-in-Lending Act (TILA) by sending her an unsolicited credit card and not making the required disclosures. The plaintiff claimed that the defendant violated 15 U.S.C. §§ 1637(a) and (c) of the TILA that require the creditor to make certain enumerated disclosures. The plaintiff first argued that while the defendant's disclosures would satisfy § 1637(a), the disclosures came too late to be effective. The statute mandates that the disclosures must be made before the opening of a credit card account. The plaintiff argued that the credit card account was opened before the defendant sent her the card. The court rejected this argument, stating that an account is not open until, at the earliest, a consumer has made a commitment to be bound by its terms. Because the plaintiff did not activate the card, there is no evidence that the account was open, therefore the defendant's § 1637(a) disclosures were timely. The court also stated that because the plaintiff had never used the card, or paid for any fees in connection with it, her claim under § 1637(c) must fail because she did not have standing under § 1640 to bring such a claim. Therefore, the court granted the defendant's motion for summary judgment on both of the TILA claims. The court then denied her motion for class certification because the plaintiff's failure on summary judgment would preclude her from being a member of any putative class that may exist.

FAIR DEBT COLLECTION PRACTICES ACT
(STATE COURT APPLICABILITY)

Jenkins v. Centurion Capital Corp., 2007 WL 4109235
(N.D. Ill. Nov. 15, 2007)

The plaintiff owed a credit card debt to the defendant bank. The bank and its law firm debt collectors filed an action in state court to collect the debt. During the proceeding, the law firm sent the plaintiff a notice saying that the defendant bank had sold the debt to another company that was also represented by the law firm. The law firm failed to attach several documents, including the change in ownership of the loan, to the state court complaint. The defendants then dismissed the state court action. The plaintiff then brought this suit alleging that the defendants violated several provisions of the Fair Debt Collection Practices Act (FDCPA) by using false, deceptive or misleading representations to collect a debt in violation of 15 U.S.C. § 1692e and using unfair or unconscionable means to collect a debt in violation of § 1692f. The defendants moved to dismiss the claim by alleging that the FDCPA does not govern the contents of state-court collection complaints. The court held that Seventh Circuit case law does not preclude a claim based on a false representation in a state court complaint. Therefore, the court held that the plaintiff could maintain a cause of action under the FDCPA by alleging violations of the FDCPA in the state court complaint. The court denied the defendant's motion to dismiss.

FAIR CREDIT REPORTING ACT (FIRM OFFER
OF CREDIT)

Johnson v. Juniper Bank, 2007 WL 4219431 (E.D. Wis.
Nov. 28, 2007)

Plaintiff received a pre-approved credit card offer from the defendant bank. The defendant had obtained the plaintiff's credit report before sending the offer. The offer stated that the plaintiff would receive a six-month, fixed 0% APR on purchases; a credit line of up to \$7,500; and no annual fee. The card then stated that based on the plaintiff's return of a reply card, the plaintiff would then be eligible for one of three much higher interest rates. The plaintiff brought suit under the Fair Credit Reporting Act (FCRA), alleging that the defendant had obtained the plaintiff's credit report without a permissible purpose because the offer was not a firm offer of credit. The defendant filed a motion for summary judgment. The court first stated that it would follow the Seventh Circuit's approach in Cole v. U.S. Capital, Inc. and require that the offer have sufficient value. The court then stated that it appeared that the defendant would have honored its offer to the plaintiff. The plaintiff also had the opportunity to call a number to determine what the minimum offer of credit would have been. Additionally, the mailer included many material terms including the credit line and a 0% fixed APR for the first six months. Also, the court stated that unlike in Cole this card could be used to purchase any

items, making it more of an offer than just a card that could be used to purchase an automobile. For these reasons, the court held that the offer was a firm offer of credit. The court also stated that even if the offer was not a firm offer of credit, the bank's reading of the statute could be considered reasonable; therefore, any violation would not have been willful as is required under the FCRA statute. For these reasons the court granted the defendant's motion for summary judgment.

.....

8TH CIRCUIT
DECISIONS



FAIR DEBT COLLECTION PRACTICES ACT
(OFFER OF JUDGMENT)

Jenkins v. Gen. Collection Co., 2007 WL 3376730 (D.
Neb. Nov. 9, 2007)

Plaintiff, on behalf of herself and others similarly situated, filed a lawsuit against the defendant debt collector for violating certain provisions of the Fair Debt Collection Practices Act (FDCPA). Before the class was certified, the defendant served the plaintiff with an Offer of Judgment, pursuant to Rule 68 of the Federal Rules of Civil Procedure, which allowed judgment to be taken against the defendant in favor of the plaintiff individually. The plaintiff neither accepted nor rejected the offer, but shortly after brought a motion to strike the order. After the magistrate judge issued an order striking the Offer of Judgment, the defendant appealed the decision stating that the strike was premature. The court followed reasoning in the Eighth Circuit that forbids the use of Rule 68 to moot possible class relief unless there is undue delay in filing a motion for class certification. The court also held that because the offer creates a conflict between the plaintiff's personal interests and her obligation to act as guardian for other class members, the Rule 68 motion serves no useful purpose at such an early stage of the litigation. Therefore, the court affirmed the ruling of the magistrate judge in granting the plaintiff's motion to strike the Rule 68 Offer of Judgment.

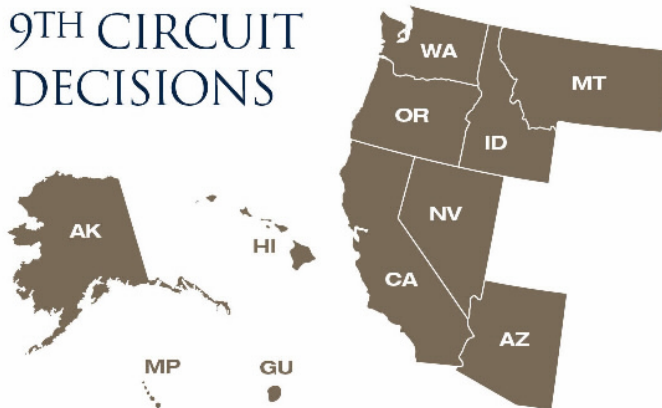
FAIR CREDIT REPORTING ACT (FIRM OFFER OF CREDIT)

Klutho v. Home Loan Center, Inc., 2007 WL 4191973 (E.D. Mo. Nov. 21, 2007)

Plaintiff received a prescreened promotion letter from the defendant lender. The lender had accessed the plaintiff's credit report before sending the letter. The letter ambiguously notified the plaintiff that his property had been preapproved under the defendant's loan program 1.5%/5.646% APR. The letter did not say what the program was, nor did it say that the plaintiff was eligible for a particular amount or any particular rate. The plaintiff brought suit alleging that the defendant accessed the plaintiff's credit report without a permissible purpose in violation of the Fair Credit Reporting Act (FCRA). In a previous ruling, the court, following the Seventh Circuit's opinion in *Cole v. U.S. Capital, Inc.*, denied the defendant's motion to dismiss, holding that the solicitation was not a firm offer of credit under the FCRA. Both parties filed motions for summary judgment. The defendant argued that even if the offer was not a firm offer of credit that any violation of the FCRA was not willful. Following the Supreme Court's ruling in *Safeco Ins. Co. of Am. v. Burr*, the court held that the defendant's conduct was not willful. The court stated that there is no allegation that the defendant knew that its actions violated the FCRA. Additionally, the court stated that there was no evidence that the defendant even acted in reckless disregard for the law. The court noted that previous courts had found that the defendant's interpretation could be reasonable. Because of these reasons the court granted the defendant's motion to dismiss.

.....

9TH CIRCUIT DECISIONS



FAIR DEBT COLLECTION PRACTICES ACT (SUFFICIENT NOTICE LETTER)

Parker v. CMRE Fin. Serv., Inc., 2007 WL 3276322 (S.D. Cal. Nov. 5, 2007)

Plaintiff filed suit against the defendant debt collector alleging violations of the Fair Debt Collection Practices

Act (FDCPA) and several state consumer protection laws. The plaintiff argued that the defendant violated 15 U.S.C. § 1692g(a)(4) by providing a non-compliant notice. The defendant filed a motion to dismiss all claims. The plaintiff argued that because the defendant's letter omitted the words "or any portion thereof" when discussing what debt it would verify with a 30 day notice, and those exact words were used in the statutory guidelines, that the defendant was not in compliance with §1692g(a)(4). The court held that the plaintiff's argument failed for several reasons. First, the court rejected the notion that only a verbatim recitation of the language contained in § 1692g(a) complies with congressional intent. Second, the plaintiff's argument ignored the context of the disclosure. The court stated that the inclusion of the words "or any portion thereof" was not necessary because a least sophisticated consumer would have realized that the words used were referring to the amount owed. Additionally, the court held that the statute only requires that the defendant inform the consumer that if the consumer disputes the debt, the debt collector will mail a verification of the debt, which was done in this case. Therefore, the court dismissed the plaintiff's FDCPA claim, and because the federal claim failed, declined to exercise supplemental jurisdiction over the state law claims.

TRUTH-IN-LENDING ACT (RESCISSION)

Phleger v. Countrywide Home Loans, Inc., 2007 WL 4105672 (N.D. Cal. Nov. 16, 2007)

The plaintiff fell victim to a scam in which she was defrauded out of thousands of dollars. One of the perpetrators used her information to obtain a mortgage loan from the defendant bank that was secured by the plaintiff's residence. After the plaintiff defaulted on the fraudulent loan, the defendant moved to foreclose her

residence. The plaintiff discovered the fraudulent activity and after the perpetrator of the fraud was jailed she instituted this action seeking an ex parte temporary restraining order that would enjoin the defendants from foreclosing on her home. The plaintiff asserted that the defendant violated various provisions of the Truth-in-Lending Act (TILA). Additionally, the plaintiff argued that her contract with the defendant should be cancelled. The plaintiff presented evidence that she was not present at the signing of the loan documents. The court first held that if a party is unaware it is executing a contract, or it did not sign the contract at all, the contract is void for lack of mutual assent. The court stated that the plaintiff made a showing of probable success on the merits that her contract was void. The plaintiff alleged that even if it could be proven that she signed the loan documents, the defendant never sent her an adequate Notice of Right to Cancel as is required under 15 U.S.C. § 1635(a) of the TILA. Specifically, the contract stated that it was signed on September 18th, but that the three day rescission date would expire on September 20th, therefore, only lasting

two days. Following Ninth Circuit precedent, the court held that this technical violation could be enough to successfully argue that the error extended the plaintiff's right to rescind for three years under the TILA. The court then held that the plaintiff would be irreparably harmed if the defendants were to foreclose upon her home. Finally, the court stated that it was not requiring bond to be paid by the plaintiff. Because the plaintiff showed probability of success on the merits for her TILA claim and her contract cancellation claim, the court granted the ex parte application for a temporary restraining order and order to show cause and enjoined the defendants from proceeding with the foreclosure and sale of the plaintiff's residence.

FAIR CREDIT REPORTING ACT (FURNISHER OF INFORMATION LIABILITY)

Dvorak v. AMC Mortgage Svc., Inc., 2007 WL 4207220 (E.D. Wash. Nov. 26, 2007)

Defendant was hired by a lender to service the plaintiffs' mortgage. After the plaintiff filed for bankruptcy, the defendant reported to several credit reporting agencies (CRAs) that the plaintiffs' home mortgage loan had been discharged in bankruptcy. The plaintiffs informed the defendant that they believed this was incorrect information. The plaintiffs filed suit under the Fair Credit Reporting Act (FCRA) and other state consumer protection laws alleging that by falsely reporting that plaintiffs discharged their mortgage debt in bankruptcy, the defendant injured the plaintiffs' credit rating. The defendant filed for summary judgment. The court first held that all of the plaintiffs' claims must fail because they were incorrect in asserting that their loan was not discharged in bankruptcy. The court stated that although the plaintiffs may have intended to reaffirm the mortgage loan, they did not reaffirm it per the procedures specified in the U.S. Bankruptcy Code 11 U.S.C. § 524(c). The court also held that the defendant was entitled to summary judgment for additional reasons. First, the plaintiffs brought an action against the defendant under the only available statute, 15 U.S.C. § 1681s-2(b), which allows for a private action against a furnisher of information. However, the statute requires that for the plaintiff to bring a suit, first a CRA must report a dispute of information to the furnisher of information. In the instant case, there was no evidence that a CRA provided the defendant with notice of a dispute; therefore, the court granted summary judgment in favor of the defendant on the plaintiffs' FCRA claim.

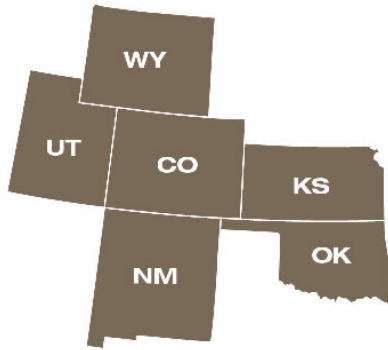
FAIR DEBT COLLECTION PRACTICES ACT (ATTORNEY'S FEES)

Navarro v. Eskanos & Alder, 2007 WL 4200171 (N.D. Cal. Nov. 26, 2007)

The plaintiff defaulted on a credit card account. The credit card company assigned the debt to the defendant law firm debt collector. After mailing the plaintiff and attempting to collect the debt, the plaintiff sent the defendant several cease and desist letters informing the defendant that the plaintiff was considering filing for bankruptcy. The defendant incorrectly filed the information, which resulted in the plaintiff receiving another collection letter from the defendant. The plaintiff sued defendant alleging two separate violations of the Fair Debt Collection Practices Act (FDCPA). The defendant admitted liability and offered to settle the case for \$500. The plaintiff rejected and eventually entered into a settlement agreement with the defendant that agreed the plaintiff would accept \$1,500 in statutory and actual damages for both claims, plus reasonable attorney's fees. The plaintiffs then requested \$3,500 in attorney's fees and the defendant rejected the offer. After attempting to settle the case for a year and having a special master appointed to the controversy, the plaintiff now requests \$127,943.64 in attorney's fees, of which \$18,102.5 are for the current motion for summary judgment and request for attorney's fees and costs. The defendant raised several objections to this award of attorney's fees and the court discussed each in turn. The court first determined that, in construing the lodestar amount, the lead attorney's rates should be reduced from \$300/hour to \$250/hour, and the law clerk's rate should be reduced from \$125/hour to \$75/hour. The court then stated that the larger issue was the time billed. The court stated that when this case started, the defendant contacted the plaintiff first and offered \$500 to settle the case. The court noted that there is evidence that the plaintiff's attorney did not even provide this information to the plaintiff. The court also stated that the plaintiff has shown that she is unaware of the basis for the case. Additionally, the court noted that there were two straightforward claims that should have only taken two days to settle, but because of actions of the plaintiff's attorney, have taken a year. The court held that the plaintiff's attorney's actions and billing practices appear calculated to maximize his fees and cannot be justified. Therefore, considering the activities of the plaintiff's attorney, the court held that while a lodestar fee of \$97,360 would be an accurate calculation, it would be excessive and unreasonable. Therefore, the court denied the plaintiff's motion for attorney's fees and costs.

.....

10TH CIRCUIT DECISIONS



REAL ESTATE SETTLEMENT PROCEDURES ACT & FAIR DEBT COLLECTION PRACTICES ACT (ACCOUNTING ERRORS & FALSE REPRESENTATION)

Cook v. Chase Manhattan Mortgage Corp., 2007 WL 4205870 (10th Cir. Nov. 29, 2007)

Plaintiffs had a mortgage loan with the defendant mortgage corporation. Believing that the plaintiffs had defaulted on their loan, the defendant instituted foreclosure proceedings. The plaintiffs alleged that they had been current on their payments and that the defendant had made several accounting errors with respect to their account. The plaintiff then brought an action against the defendant mortgage corporation alleging that the defendant failed to correct accounting errors in a timely manner in violation of the Real Estate Settlement Procedures Act (RESPA), made false, deceptive, and misleading representations in connection with collecting a debt in violation of the Fair Debt Collection Practices Act (FDCPA) and violated other state consumer protection laws. In regard to their RESPA claim, the district court held that the plaintiffs had failed to establish that there were any genuine issues of material fact. The court concluded that the plaintiff presented no evidence that the defendant failed to credit their account properly. As to the FDCPA claim, the court held that two subsections of 15 U.S.C. §1692(e) were applicable. First, the court ruled that the defendant did not violate § 1692e(4), which prohibits a debt collector from representing or implying that nonpayment will result in the sale of property. The court concluded that the defendant acted appropriately in sending the 2003 notice of foreclosure. The court stated that it was the plaintiffs' own misunderstanding of their payment obligations that led them to believe that the default and foreclosure was unlawful. Second, the court stated that there was no evidence presented by the plaintiffs that the defendant provided false representation or implication that the consumer committed any crime or other conduct to disgrace the consumer. For those reasons, the district court granted summary judgment in favor of the defendant in regard to the RESPA and FDCPA claims. The Tenth Circuit held that the district court's decision was thorough and well reasoned and that

none of the plaintiffs' arguments were persuasive. Therefore, the court affirmed the ruling of the district court in granting summary judgment in favor of the defendant.

FAIR CREDIT REPORTING ACT & EQUAL CREDIT OPPORTUNITY ACT (PERMISSIBLE PURPOSE)

Enoch v. Dahle / Meyer Imports, L.L.C., 2007 WL 4106264 (D. Utah Nov. 16, 2007)

Plaintiff attempted to purchase a vehicle from the defendant automobile dealership. The dealership had the plaintiff sign a document that stated that the plaintiff agreed to seek arrangements for financing. The dealership then sent the application to the defendant lenders who reviewed the application and the plaintiff's credit report in order to determine whether to extend financing. When the lenders refused financing, the dealership required the plaintiff to return the vehicle immediately or pay the purchase price in full. The plaintiff brought several claims against the dealership, a credit reporting agency and lenders alleging various violations of the Fair Credit Reporting Act (FCRA) and the Equal Credit Opportunity Act (ECOA). Both parties filed motions for summary judgment. First, the court held that the lenders had requested a copy of the plaintiff's credit report for a permissible purpose. The court stated that the plaintiff had knowledge that she was involved in a credit transaction and she knew that lenders would be reviewing her credit information to determine whether to finance her purchase. The court stated that it was immaterial that the plaintiff believed that she had already received financing from the dealership because the defendants still complied with 15 U.S.C. §1681b(a)(3)(A). The court granted summary judgment in favor of the lenders but rejected their request for attorney's fees, stating that the defendants did not provide adequate evidence that the plaintiff brought the suit with any intent to harass. The plaintiff also brought a claim against the defendant credit reporting agency (CRA) alleging that they violated § 1681b which requires that the CRA maintain reasonable procedures to limit the furnishing of a consumer report only for permissible purposes. The court rejected the plaintiff's claim holding that she did not provide evidence that the dealership actually did request her credit data for an impermissible purpose, let alone that the CRA had reason to believe that the dealership had an impermissible purpose. Because she provided no basis for the court to hold that the CRA had reason to know that the report was being used for an impermissible purpose, the court rejected the plaintiff's claim against the CRA. The court granted all of the defendants' motions for summary judgment and dismissed the plaintiff's claims.

.....

11TH CIRCUIT DECISIONS



FAIR DEBT COLLECTION PRACTICES ACT &
FAIR CREDIT REPORTING ACT (FURNISHER
OF INFORMATION LIABILITY & NOTICE)
Jackson v. Genesys Credit Management, 2007 WL
4181024 (S.D. Fla. Nov. 21, 2007)

Defendants placed a call to the plaintiff regarding a debt that was owed by the plaintiff. This was the defendants' only communication with the plaintiff, and soon after, negative information was placed in the plaintiff's credit file, although it was removed after six to nine months. The plaintiff filed an action against the defendants alleging violations of the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA). The defendants filed a motion to dismiss. The plaintiff's complaint alleged two separate violations of the FCRA. In two similar claims, the plaintiff alleged that the defendants had failed to remove false and inaccurate information from a credit report. The court said that even if the claims were properly brought under 15 U.S.C. §1681s-2, which they were not, the claims would fail because the statute first requires that the furnisher of information be notified by a consumer reporting agency (CRA) of disputed information. Additionally, the plaintiff did not allege that the defendants failed to investigate the plaintiff's complaint of inaccurate information, nor that it failed to correct the information; therefore, the plaintiff's FCRA claims were dismissed. The plaintiff then alleged that because the defendants did not provide him with written notice of his dispute, they violated an unnamed provision of the FDCPA. The court stated that the statute allows for oral notice and because the defendants called the plaintiff to acknowledge his dispute and also because the defendants immediately began to remedy the mistake, the plaintiff's claim must be dismissed. Therefore, the court dismissed both the plaintiff's FCRA and FDCPA claims.



ALABAMA · GEORGIA · MISSISSIPPI · TENNESSEE

Birmingham

420 North 20th Street
Suite 3400, Wachovia Tower
Birmingham, AL 35203
(205) 251-3000

Atlanta

171 Seventeenth Street, NW
Suite 1100
Atlanta, GA 30363
(404) 815-3000

Jackson

The Heritage Building
401 East Capitol Street, Suite 100
Jackson, MS 39201
(601) 355-3434

Montgomery

201 Monroe Street
Suite 1950, RSA Tower
Montgomery, AL 36104
(334) 241-7000

Nashville

700 Two American Center
3102 West End Avenue
Nashville, TN 37203
(615) 724-3200

This update contains only a summary of the subject matter discussed and does not constitute and should not be treated as legal advice regarding the topics discussed therein. The topics discussed involve complex legal issues and before applying anything contained herein to a particular situation, you should contact an attorney and he or she will be able to advise you in the context of your specific circumstances.

Alabama State Bar rules require the inclusion of the following: No representation is made about the quality of the legal services to be performed or the expertise of the lawyer performing such services.

In addition, the Rules of Professional Conduct in the various states in which our offices are located require the following language:

THIS IS AN ADVERTISEMENT. FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST.