A Flurry of Fair Debt Collection Developments

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I. Introduction

II. Update on the Heintz Case

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QUARTERLY REPORT

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1. See U.S. v. Heintz, 110 S. Ct. 1426 (1990). Although part of the dispute involves a question of whether an employee of a debt collection agency is a "debt collector," the Court of Appeals' decision is based on a construction of the FDCPA which the Supreme Court has rejected.

2. See, e.g., 110 S. Ct. 1426 (1990). See also supra note 11, supra note 2. See also infra note 2. See also infra note 11, supra note 1.

3. Id. at 1427. See supra note 1.

4. Id. at 1427. See supra note 1.

5. Id. at 1427. See supra note 1.


7. See supra note 1.

8. See supra note 1.

9. See supra note 1.

10. Id. at 1426. See infra note 2.

11. See supra note 1.

12. Id. at 1426. See infra note 2.

13. See supra note 1.


15. See supra note 1.

16. See supra note 1.

17. See supra note 1.

18. See supra note 1.

19. See supra note 1.

20. See supra note 1.
The 1996 revisions to FDCPA section 1621(e)(2) are very important changes for collection lawyers and litigation counsel. Revised section 1621(e)(2) provides that if an attorney reasonably "believes in good faith that the communication is from a debt collector," the attorney must inform the debt collector of any initial communication that the attorney reasonably "believes in good faith is from a debt collector." This is a significant change, as it requires all communications to be identified as from a debt collector. To the extent that a communication includes a name that is "similar to" the name of a debt collector, the attorney must identify the communication as from a debt collector. This is a significant change, as it requires all communications to be identified as from a debt collector.

IV. The Dikeman Decision

For lawyers concerned with the U.S. Supreme Court's decision in Heintz, the subsequent interpretation of the FCPCPA, which provides that a "debtor's communication relating to debt collection litigation must include express disclosures under section 1692(e)(2), the Dikeman decision represents a seemingly rare example of good sense in the FCPCPA. In Dikeman a debtor collector, seeking a judgment in favor of the debt collector, met with a request from the consumer's attorney for verification of the debt under section 1692(e)(2). The debt collector's answer contained all the required disclosures, but the consumer's attorney refused to accept the answer. Instead, the consumer's attorney requested that the debt collector provide further verification. Dikeman represents the kind of sound approach to statutory analysis that is too often lacking in FCPCPA cases. Such an approach is clearly warranted and can be seen to effectuate that Supreme Court's apparent admonition in Heintz that the courts should "plausibly" read the statute to avoid anomalous results. As Dikeman illustrates, a "plain meaning" statutory interpretation does not require a court to adopt the most absurd interpretation.

V. Johnson v. Eater

Now, the bad news for collection attorneys and other debt collectors. Based on a review of the developments in the law of debt collection law in Johnson, many observers (including your author) have believed that the Johnson case requires recovery of attorney fees by the defendant. Johnson v. Eater, 524 U.S. 304 (1998), was decided by a narrow 5-4 majority. The court held that the attorney fees demanded by the defendant attorney were not recoverable by the defendant. Johnson was a case in which a defendant attorney demanded attorney fees from the defendant attorney fees. Federal legislation to address the issue failed to pass in 1996. Unless and until it does, collection attorneys will have to rely on the courts to maintain some balance in these cases. But considering the statutory language, this is a gamble that most defendants cannot prudently afford to take. Therefore, until the statute is fixed, most defendants will have to go on accepting adverse settlements based on allegations of technical errors in order to avoid facing attorney fee claims of the plaintiff's counsel.

VI. Avila and the Creditor's Loan File

Avila v. Rubin illustrates what Manuel Newburger has called one of the "gray areas" in FCPCPA law. It is "inherently" true that a lawyer violates the FCPCPA by generating collection letters without first reviewing the lender's loan file to independently confirm that the debt is properly due and owing. The argument is that a collection letter from an attorney has a representation that such a review and conclusion have occurred, so that failure to do so is a false, misleading and deceptive communication under the FCPCPA. This is quite a stretch. One has to look pretty hard and creatively, to find a rule in section 1692(e)(2) that a communication is misleading or deceptive. A careful reading of the statute shows the attorney has reviewed the loan file. Yet that seems to be what the Seventh Circuit is requiring in Avila.

Albert G. Rubin, acting as attorney, was not the "real source" of the letter in this case. The true source of the "attorney" letter was the collection agent who pressed a button on the agency's computer. Albert G. Rubin & Associates, L.L.C., is a collection agency, not a law firm at all in any real sense of the term.
QUARTERLY REPORT

[Text continues...]

[The text continues with the discussion of the FDCPA and its expanding judicial "stricture.

Appendix A

(Except from client retainer contact)

By entering into this agreement, you certify and warrant to Bowman, Heintz, Boscia & McPhee that each account and/or matter you send to Bowman, Heintz, Boscia & McPhee for representation will:

1. Include genuine and authentic documents evidencing the debt and/or obligation of your customer(s).

2. Include a true and accurate statement of the balance legally due and owing, which balance will include no amount or change unless it is expressly authorized by the agreement creating the debt and/or permitted by law.

UPDATE ON DEBT COLLECTION AND CONSUMER BANKRUPTCY
February 20–21, 1997
DoubleTree Lincoln Center—Dallas, Texas

Thursday, February 20
9:00-9:50 Overview of Debt Collection Developments and the FDCPA
Amy C. Harrell, Professor of Law, Oklahoma City University, School of Law and of Counsel, Pryor & Pringle, Oklahoma City, OK
10:00-10:50 The Heintz Care and Its Aftermath
George W. Heintz, Bowman, Heintz, Boscia & McPhee, Merrillville, IN
11:00-12:00 Update on FDCPA Litigation
Michael Neuberger, Steuer & Weingarten, PC, Austin, TX
12:00-1:00 Lunch
1:00-2:00 FDCPA Compliance and Litigation Strategies
Randy Miller, The Miller Law Firm, LC, Dallas, TX
2:30-3:20 Debunking FDCPA Class Actions
Lawrence Young, Hughes, Whitney & Andrews, LLP, Houston, TX
3:30-4:20 Practical Considerations in Enforcing Security Interests in Motor Vehicles
Michael W. Daragon, Jannoz & Daragon, PC, Dallas, TX

Friday, February 21
9:00-10:20 Update on Consumer Bankruptcy Cases
Richard E. Cookson, Professor of Law, Oklahoma City University, School of Law, Oklahoma City, OK
10:20-12:00 Update on Consumer Chapter 13 Bankruptcy Cases
Richard E. Cookson, Professor of Law, Oklahoma City University, School of Law, Oklahoma City, OK
12:00-1:00 Lunch
1:00-1:30 Protecting the Rights of Motor Vehicle Lien Holders in Chapter 13 Bankruptcies
Michael W. Daragon, Jannoz & Daragon, PC, Dallas, TX
2:00-2:30 The Interfaces of Bankruptcy and Divorce Law
Theresa Klise, Klise & Klise, Oklahoma City, OK
3:30-4:30 Fraudulent and Preferential Transfers Under State and Federal Law
Michael Bedolla, Richie & Hanchett, Dallas, TX

[The text concludes with the updates on debt collection and consumer bankruptcy cases.]

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