



Newsletters

Consumer Law Hinsights - March 2021

March 31, 2021

Consumer Law Hinsights is a monthly compilation of nationwide consumer protection cases of interest to financial services and accounts receivable management companies. In this edition, we are also highlighting popular posts from our blog, [Consumer Crossroads](#).

Expand each of the topics below to read our analyses of the cases and blog posts covered in this edition.

SCOTUS Conducts Oral Argument in *TransUnion v. Ramirez FCRA* Class Certifications Case

The Supreme Court of the United States conducted oral argument in the *TransUnion v. Ramirez* case yesterday. Hinshaw published a review of oral argument in today's ACA Daily newsletter, along with an overview of the issues at stake. We anticipate the court will issue its ruling before Independence Day...

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Third Circuit Says Law Firm's Consumer Call-Back Letter Was Not Deceptive

Earlier this month, the Third Circuit found that the language "If you wish to eliminate further collection action, please contact us at 800-832-7675 ext. 8500" was not a violation of the Fair Debt Collection Practices Act (FDCPA). The plaintiff in the matter represented a class of individuals who received a collection letter with the cited language and claimed that the language implied that a phone call would suffice for actions required by the FDCPA to be in writing. Specifically, the rule requires that a debtor provides written notice to the debt collector that they dispute the debt. Then, the debt collector is required to suspend communications with the debtor until adequate verification of the debt is collected and provided to the debtor. In the present matter, the law firm provided an explanation of these rights in the letter. Still, the consumer tried to argue that the suggested phone call caused her confusion about her rights. The Third Circuit disagreed, and found that the plaintiff did not face any financial harm from the letter and that she was satisfied with the communication after her phone call with the law firm. Instead, the third circuit found that "Moyer sees confusion where none exists" and declined to revive the proposed class action suit.

Attorneys

Justin M. Penn

Service Areas

Consumer Financial Services



The case is *Candace Moyer v. Patenaude & Felix APC*, case no.: 20-1937, U.S. Court of Appeals for the Third Circuit.

Filing for Bankruptcy Can Eliminate Standing in FDCPA Claims

An outstanding debt on a Citibank credit card was purchased by Midland Funding, LLC, who then reached out to Bledsoe to collect on the debt. Bledsoe eventually filed suit against Midland, claiming violation of the FDCPA. In doing so, Bledsoe alleged that:

- Midland made multiple settlement offers that were deceptively framed as time-sensitive;
- repeatedly called after being asked not to do so;
- threatened legal action that Midland did not intend to take; and
- told Bledsoe that making payments would remove the debt from their credit report.

Although Midland contested these claims under various grounds, the case was ultimately dismissed because of a bankruptcy filing by Bledsoe.

According to the Eighth Circuit, Bledsoe lost prudential standing to pursue his FDCPA claim by filing for bankruptcy. The FDCPA claim became part of the bankrupt estate, meaning it was the trustee of the estate who then had standing to bring the lawsuit, effectively stripping Bledsoe of his earlier standing. The Chapter 7 bankruptcy filed by Bledsoe needed to include the claim in the schedule for him to retain his standing. While the schedule could be amended, such an amendment requires notice and hearing, which Bledsoe failed to do. Bledsoe could have also regained standing had the trustee expressly abandoned the claim, but again, without the required notice and hearing, the Eighth Circuit held that no such abandonment occurred.

The rules of bankruptcy require that the creditor be afforded sufficient notice as to the status of the outstanding debt. Thus, if a creditor discovers that a debtor has filed for bankruptcy, it is prudent to review the schedule to ensure the debt in question is properly documented.

The case is *Bledsoe v. Midland Funding, LLC*, No. 4:19-cv-02779-JAR, 2021 WL 694825 (E.D. Mo. Feb 23, 2021).

House Subcommittee on Consumer Protection and Financial Institutions Considering 18 Bills

On March 11, 2021, the U.S. House Subcommittee on Consumer Protection and Financial Institutions held a hearing titled "Slipping Through the Cracks: Policy Operations to Help America's Consumer During the Pandemic." During the hearing, 18 bills were reviewed—all targeted at financially assisting consumers with outstanding debts. On the one side were arguments that the outlined relief was necessary to help those most impacted by the global pandemic. Generally, the methods of assistance involved limiting actions that a debt collector could take, and offering forbearance or forbearance-like options to consumers so that they could put their immediate funds towards activities other than paying off debts.

The other side argued that these proposals would ultimately cause more harm than good to consumers since the debt collection and accounts receivable management industry would have to limit the amount of debt in circulation or increase interest rates to stay in business while complying with the proposed regulations. This argument focuses on small businesses who lack the resources to collect on debts independently and rely on debt collection agencies, without which they would not be able to operate their current volumes—as limited as they may already be. Also impacted are financially vulnerable individuals who rely on these businesses for financial support and would face a lack of lending or lending at higher interest rates

Written questions were accepted through March 17, 2021, and the hearing record was left open. We'll have to see how the process continues to unfold. The proposals being evaluated are below.

1. Amendments to the Fair Debt Collection Practices Act (FDCPA)
 1. Debt Collection Practices Harmonization Act



2. Restrictions on Collections of Small Business and Nonprofit Debt During a national Disaster or Emergency (Relief for Small Businesses and Nonprofits Act)
3. Fair Debt Collection for Servicemembers Act
4. Non-Judicial Foreclosure Debt Collection Classification Act
5. Consumer Protection for Medical Debt Collections Act
6. Stop Debt Collection Abuse Act
2. Amendments to the Consumer Financial Protection Act (CFPA)
 1. Ending Debt Collection Harassment Act of 2021
 2. Protecting Seniors and Vulnerable Adults from Misleading and Fraudulent Marketing or Sales Practices Related to the Pandemic and Other Unlawful Scams (Senior Investor Pandemic and Fraud Protection Act)
3. Amendment to the Fair Credit Reporting Act (FCRA)
 1. Disaster Protection for Workers' Credit Act
4. Amendment to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
 1. COVID-19 Mortgage Relief Act
5. Amendment to the Truth in Lending Act (TILA)
 1. Small Business Lending Fairness Act
6. Relief for Consumers During COVID-19 Act of 2021
7. Emergency Relief for Student Borrowers Act of 2021
8. Promoting Access to Credit for Homebuyers Act of 2021
9. COVID-19 Fraud Prevention Act
10. Private Loan Disability Discharge Act of 2021
11. Financial Compensation for CFPB Whistleblower Act
12. Resolution of Disapproval on the OCC's National Banks and Federal Savings Associations as Lenders Final Rule.

View the "Slipping Through the Cracks: Policy Operations to Help America's Consumer During the Pandemic" hearing on the [Subcommittee's YouTube channel](#). You can also learn more about the hearing on the [U.S. House Committee on Financial Services' website](#).

Above Average Inclusion and Diversity Seen in Collections Industry

ACA International and Kaulkin Ginsberg recently released a study showing that the debt collection industry provides significant employment opportunities for women and people of color.

In 2020, while the total U.S. workforce was 47% female, 66% of the workforce in the debt collection industry was female. Similarly, 36% of the U.S. workforce identified as a racial or ethnic minority, while 42% of bill collectors were a part of a racial or ethnic minority. Specifically, 23.9% of debt collectors were black, and 15.8% were Hispanic. Further, the median wage for women was \$37,000 annually compared to the national median of \$31,133, offering roughly 19% more in total earnings.

Overall, the debt collection community has continued to provide employment and growth opportunities to historically disadvantaged minorities that it sees as a chance to foster growth and healthier work environments, according to the report.

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Landmark New York Court of Appeals Decision Clarifying Calculation of Statute of Limitations in Mortgage Foreclosure Actions



The New York Court of Appeals reversed four Appellate Division decisions and decided in favor of the mortgagees in a consolidated decision. The court's decision immediately impacts the legal landscape as it provides bright-line rules for both mortgagors and mortgagees to follow in future litigation in how to calculate the statute of limitations... >> [Read more](#)

CFPB Highlights COVID-19-Fueled Regulatory Risks for Examined Industries in Special Edition of Supervisory Highlights

In its recent Special Edition of *Supervisory Highlights on COVID-19 Prioritized Assessments*, the Consumer Financial Protection Bureau summarized challenges and risks with respect to several industries it had informally examined since the start of the pandemic. We outlined the key takeaways by industry... >> [Read more](#)

Following Fair Lending Investigation, NYS DFS Issues Report, Recommendations, and Mortgage Lender Best Practices

The New York State Department of Financial Services issued a report detailing its investigation of the mortgage lending market in the Buffalo metropolitan area. The report includes findings of a "distinct lack of lending" by mortgage lenders, particularly nonbank lenders, in neighborhoods with majority-minority populations and to minority homebuyers in general... >> [Read more](#)