Danger to DC=FCRA

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**Seminar Paper On The Fair Credit Reporting Act Related To Debt Collectors - Part Four - Dangers To Debt Collectors From Consumer Disputes**

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In this fourth part of our seminar paper, we look at the impact of consumer disputes either directly to a debt collector or to the [credit reporting agencies concerning false information](http://www.alabamaconsumerlawblog.com/2007/03/third_critical_step_in_correct.html) put on the consumer's credit report by the collection agency.

IV. DANGERS TO DEBT COLLECTORS FROM CONSUMER DISPUTES

There are two areas in which a debt collector needs to be able to properly handle “disputes” from consumers. One arises out of the Fair Debt Collection Practices Act (FDCPA) and the other is from the reinvestigation part of the FCRA.

A. FDCPA – 1692e(8)

This section of the FDCPA states that it is a violation of the FDCPA to “Communicat[e] or threaten[] to communicate . . . credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.” [Emphasis added].

If a consumer disputes a debt with a debt collector, and then the debt collector reports or updates the reporting of information, it must tell the CRAs that the account is disputed. This will result in a notation under the “Remarks” section of the trade line that the account “is disputed by consumer” which normally has the effect of it not being considered when the various scoring models (FICO, etc) are used to compute a credit score.

This is often overlooked by debt collectors either intentionally or unintentionally. There is an incentive to not mark the account as disputed in order to “encourage” the consumer to pay. The danger, of course, is that this is an absolute violation of FDCPA and so suit can be brought against the debt collector.

In the suit, statutory damages can be awarded and attorney’s fees. The other problem for debt collectors is the consumer may bring an invasion of privacy claim which could expose the debt collector to punitive damages. If the violation of the law is not intentional, then the debt collector will be spared the punitive damages but can still be liable under the FDCPA and state law (invasion of privacy primarily) which means compensatory damages or statutory damages, and attorney fees.

A recent case on this subject explains the law, at least in the Eighth Circuit. In *Wilheim v. Credico, Inc.*, 2008 WL 553207 (8th Cir. March 3, 2008), the Court noted that if the debt collector reports the account and then learns of the fact that it is disputed, the debt collector does not have to update the report. But, if the debt collector does update the report, it must note the “disputed” status. 2008 WL 553207 at \*2. This opinion ignores the requirements imposed upon debt collectors (furnishers) by 15 U.S.C. Section 1681s-2(a). It does not appear the plaintiff in Credico argued this and it will be interesting to see if this argument changes the outcome of future cases in the Eighth Circuit. But what we do know is that if a debt collector knows about a dispute and then chooses to update or report, it must include the “disputed” status or it faces liability.

B. Disputes Under The FCRA

Section 1681s-2(b) imposes an affirmative duty upon a debt collector (as a furnisher) to investigate a consumer dispute if the debt collector receives notice of the dispute from a CRA. That is the critical requirement which many consumers overlook. It makes “common sense” that you could dispute directly with a debt collector for false credit reporting information but that does not trigger any private right of action under the FCRA if the investigation is either not performed or not performed in a reasonable manner.

Assuming the dispute is made to the CRA and the CRA notifies the debt collector, what must the debt collector do? Basically, the debt collector must perform a reasonable investigation and then report back its findings to the CRA.

The debt collector must “conduct an investigation with respect to the disputed information.” 15 U.S.C. Section 1681s-2(b)(1)(A). This includes reviewing all information the debt collector has on the account. The seminal case on what “investigation” means is *Johnson v. MBNA American Bank, N.A.*, 357 F.3d 426 (4th Cir. 2004), which stated in relevant part as follows:

The key term at issue here, “investigation,” is defined as “[a] detailed inquiry or systematic examination.” Am. Heritage Dictionary 920 (4th ed.2000); see Webster's Third New Int'l Dictionary 1189 (1981) (defining “investigation” as “a searching inquiry”). Thus, the plain meaning of “investigation” clearly requires some degree of careful inquiry by creditors. Further, § 1681s-2(b)(1)(A) uses the term “investigation” in the context of articulating a creditor's duties in the consumer dispute process outlined by the FCRA. It would make little sense to conclude that, in \*431 creating a system intended to give consumers a means to dispute-and, ultimately, correct-inaccurate information on their credit reports, Congress used the term “investigation” to include superficial, unreasonable inquiries by creditors. Cf. Cahlin v. Gen. Motors Acceptance Corp., 936 F.2d 1151, 1160 (11th Cir.1991) (interpreting analogous statute governing reinvestigations of consumer disputes by credit reporting agencies to require reasonable investigations); Pinner v. Schmidt, 805 F.2d 1258, 1262 (5th Cir.1986) (same). We therefore hold that § 1681s-2(b)(1) requires creditors, after receiving notice of a consumer dispute from a credit reporting agency, to conduct a reasonable investigation of their records to determine whether the disputed information can be verified.

Johnson, 357 F.3d at 430-431 (emphasis added).

This is an area where it becomes very dangerous for debt collectors (particularly debt buyers) to report information when the debt collector does not keep careful track of the information it has. Being off on the date of the delinquency (“re-aging”) or whether the account is disputed or the amount owed can lead to a lawsuit against the debt collector. In our experience debt collectors do not seem experienced dealing with laws outside of the FDCPA and seem surprised when a case that they view as a “technical” or “statutory” case can result in punitive damages because of the FCRA and state law.

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