



## Collector's Corner

Current Legal News Affecting the Collection Industry

*Franzén and Salzano, P.C. welcomes you to Collector's Corner, your source for the most recent legal news for the collection industry.*

### **Be Careful Including Privacy Notices in Your Collection Letters!**

An Illinois District Court recently refused to dismiss an FDCPA case against a debt buyer and its collection agencies which included Gramm Leach Bliley-type privacy disclosures in their collection letters. Reasoning that the least sophisticated consumer could have understood the notice to imply that Defendants *could* have violated the law by disclosing information to unauthorized third parties, the Court gave vitality to the claim. *Blair v. Sherman Acquisition*, 2004 U.S. Dist. Lexis 25106 (Dec. 13, 2004, N.D. Ill.).

### **Circuits Split on "Communications" under FDCPA.**

In *Thomas v. Law Firm of Simpson & Cybak*, 2004 U.S. App. Lexis 26446 (Dec. 20, 2004, 7th Cir.), the 7th Circuit Court of Appeals re-issued its previously vacated decision, deciding anew that a summons and a complaint constitute an initial "communication" which can trigger the disclosure requirements of §1692g. This decision creates a split of opinion with the 11th Circuit which reached the opposite conclusion in *Vega v. McKay*, 351 F3d. 1334 (11th Cir. 2003).

### **Bankruptcy Stay Violation Yields Emotional Distress Damages.**

The 9th Circuit Court of Appeals recently interpreted bankruptcy code §362(h) allowing debtors to seek emotional distress damages for willful violations of the automatic stay. The Court reasoned that the code section gave redress to "individuals" for "actual damages" and that emotional distress is the type of actual damage unique to "individuals" as opposed to corporations. *Dawson v. Washington Mutual Bank FA*, 2004 U.S. App. Lexis 25463 (Dec. 10, 2004, 9th Cir.).

Franzén and Salzano, P.C. assists collection agencies, creditors, and attorneys nationwide with their compliance and litigation needs. Our expert services include letter review, FDCPA/FCRA defense litigation, licensing, and vendor contract review. For more information about our services, please call John H. Bedard, Jr., 770-248-2885, ext.244, or e-mail him at [jbedard@franzén-salzano.com](mailto:jbedard@franzén-salzano.com).

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