

Lou Jones Breakfast Club – April 12, 2016

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What is the Fair Debt Collection Practices Act, 15 U.S.C. § 1692?

Purpose - “There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692(a)(1)

What do you need for the Fair Debt Collection Practices Act to apply?

- 1) You need a consumer
 - a. A consumer is “natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3).
- 2) You need a consumer debt
 - a. A debt is “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.” 15 U.S.C. § 1692a(5).
- 3) You need a debt collector
 - a. A debt collector is “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6)
 - b. Not a first party creditor
 - c. If there was a sale of the debt, then the debt needs to be in default at the time of the sale. If the debt is not in default, but you act as if it was, then you are a debt collector. *Schlosser v. Fairbanks Capital Corp.* 323 F. 3d 534 (7th Cir. 2003).
- 4) Damages
 - a. Statutory, up to \$1000
 - b. Actual damages, which include emotional distress
 - c. NO punitive damages

What is the Wisconsin Consumer Act?

- 1) Similar to the FDCPA, the purpose is in part, to protect customers against unfair, deceptive, false, misleading and unconscionable practices by merchants.” Wis. Stat. 421.102(2)(b).
- 2) Must be consumer credit, which means “a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer’s obligation is payable in installments or for which credit a finance charge is or may be imposed, whether such trans- action is pursuant to an open-end credit plan or is a transaction involving other than open-end credit. The term includes

consumer credit sales, consumer loans, consumer leases and transactions pursuant to open-end credit plans.” Wis. Stat. 421.301(10).

- 3) \$25,000 cap on loan
 - a. *Bank of Barron v. Gieseke*, 485 N.W.2d. 426 (Wis. Ct. App. 1992).
- 4) But applies to first party creditors, as well as debt collectors, Wis. Stat. 427
 - a. Some limitations for purchase of defaulted accounts, *Rsidue, LLC v. Michaud*, 295 N.W.2d 718 (Wis. Ct. App. 2006).

Where do I file?

- 1) What about bankruptcy court?
 - a. Jury trials
 - b. Existing caseload
 - c. Extra layer of appeal
 - d. *Stern v. Marshall*
- 2) State Court
- 3) Federal District Court
 - a. Federal question jurisdiction
 - b. *Randolph v. IMBS*

	Bankruptcy	FDPCA
Who	Anyone	Debt collector only
Scienter	Willfulness	Strict liability (§1692(e))
Defense	None	Bona fide error plus due care (§ 1692k(c)), or reliance on FTC opinion (§ 1692k(e))
Statutory Damages	None	\$1,000 maximum (§1692k(a)(2)(A))
Compensatory Damages	Yes	Yes (§1692k(a)(1))
Punitive Damages	Yes	No
Cap on Class Recovery	No	Yes (§1692K(A)(2)(B)(ii))
Maximum [Class] Recovery	No	Yes, \$500,000 or 1% of net worth, whichever is less (§1692k(a)(2)(B)(ii))
Attorneys’ fees to debtor	No	Yes (§1692k(a)(3))
Attorneys’ fees to creditor	No	Yes (§1692k(a)(3))
Statute of limitations	None (laches defense only)	One year (§1692k(d))

Randolph v. IMBS, Inc., 368 F.3d 726, 730 (7th Cir. 2004)

Common case scenarios and case evaluation

- 1) Common Claims
 - a. Dunning letter on discharged debts
 - b. Threats of suit on discharged debt
 - c. Chapter 128 issues
 - d. Discharged debt on credit reports

i. *Land v. Celloc Partnership d/b/a Verizon Wireless*, 14-cv-1017, D.E. 60
(E.D. Wis. October 28, 2015).

- 2) Odd Claims
 - a. Co-signer filed for BK
 - b. Student loan acceleration
 - c. Bad POC
 - d. Jail threats
 - e. Community property issues
- 3) Evaluation of claims
 - a. Statutory cases
 - b. Non-statutory cases
- 4) Actual Damages
 - a. Juries are made up of real people
 - b. Proof, proof, proof
- 5) Getting paid
 - a. Cost and fee shifting
 - b. Case lifecycle and average costs
 - c. Fee petitions
 - d. Watch for solvent collection agencies
- 6) General Warnings
 - a. Rooker Feldman doctrine
 - b. Suing law firms
 - c. Costs of litigating a case