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VOICE MAIL MESSAGES SATISFIED FDCA DISCLOSURE REQUIREMENTS

The United States Court of Appeals for the Eleventh Circuit has held that a debt collector's voice mail messages satisfied the disclosure requirements under the federal Fair Debt Collection Practices Act ("FDCPA"). *Beeders v. Gulf Coast Collection Bureau*, No. 11-10560, 2011 WL 2555829, at *1 (June 28, 2011). The messages under consideration stated the following:

This message is intended for Eric H. Beeders. If you are not Eric H. Beeders please hang up or disconnect. If you are Eric H. Beeders please continue to listen to this message. By continuing to listen to this message you acknowledge that you are Eric H. Beeders. Please return this call to Roy Dillard from Gulf Coast Collection Bureau. Please call 877-827-4820 and ask for file number G31852.

The debtor had sued the debt collector, arguing that the messages failed to provide a meaningful disclosure of the caller's identity or the so-called "mini-Miranda" disclosures required by the FDCPA. The debtor alleged that the messages were deficient because they did not identify the nature of the calling company's business, the fact that the caller was a debt collector and the fact that the call was being made with respect to the collection of a debt.

The Court of Appeals, however, disagreed. According to the Court, the message as a whole would not mislead an unsophisticated consumer as to the purpose of the call because the message identified the name of the caller (which includes the term "Collection Bureau") and specifically referenced a file number. For this reason, the Court found that the debt collector did not violate the FDCPA.

Debt collectors should continue to be mindful, however, of the risks associated with leaving collection messages for debtors as the Court did not indicate that the debt collector would not have violated the FDCPA's prohibition against third-party communication if the messages were listened to by a person other than the debtor, and a number of courts have been critical of debt collectors who leave collection messages. *See, e.g., Foti v. NCO Fin. Sys., Inc.* 424 F. Supp. 2d 643, 659 (S.D.N.Y. 2006) (providing that debt collectors are not entitled to use *any* means to collect, even if those means are the most economical or efficient).

□ *Margaret Stolar and Chuck Gall*

PRIVATE CAUSES OF ACTION ALLOWED AGAINST DEBT COLLECTOR UNDER THE WEST VIRGINIA CONSUMER CREDIT PROTECTION ACT

The Supreme Court of Appeals of West Virginia has held that Section 46A-5-101(1) of the West Virginia Consumer Credit Protection Act allows a consumer to assert a private cause of action against a professional debt collector (whether the collector is acting for another as a third-party debt collector or on its own behalf as a debt purchaser) who has engaged in debt collection practices that are prohibited by the WVCCPA. *Barr v. NCB Mgmt. Servs., Inc.*, No. 35709, 2011 WL 2446640 (W. Va. June 14, 2011).

The debtor had filed suit against the debt collector for allegedly violating the WVCCPA when attempting to collect on a loan placed with the debt collector for collection. The debt collector filed a motion to dismiss, arguing that a debtor did not have a private cause of action against a debt collector under the WVCCPA because the WVCCPA's remedy provisions are triggered only if a "creditor," as distinct from a third-party debt collector, violates the WVCCPA.

The court disagreed. The court indicated that the remedy provisions under the WVCCPA apply to "creditor," which generally is understood to mean one to whom a debt is owed or one who gives credit for money or goods. Nonetheless, the court indicated that Section 46A-5-101(1) should permit a consumer to assert a private cause of action against a professional debt collector to further the remedial purposes of the WVCCPA in protecting consumers from unfair, illegal and deceptive acts or practices.

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