



**BEWARE THE DEBT COLLECTOR WHO CRIES WOLF**  
*New Case Holds That Debt Collectors Who Threaten  
They Could (But Don't) Sue May Be Liable*

A third party debt collector who cries wolf by making threats that it "could" file a collection suit or refer the case to an attorney for collection, without truly intending to do either, could be liable under the Fair Debt Collection Practices Act ("FDCPA") according to the Third Circuit Court of Appeals in its September 29, 2006 decision in *Brown v. Card Service Center*. This is because the FDCPA prohibits "false and misleading statements" from debt collectors and the Third Circuit concluded "that it would be deceptive under FDCPA for [a debt collector] to assert that it could take an action that it had no intention of taking and has rarely or very rarely been taken before."

In the *Brown* case, Elizabeth Brown received a collection letter from Card Service Center ("CSC") demanding she pay a delinquent credit card balance. CSC's letter warned that Brown's failure to cooperate or make payment arrangements within five days "could result in a legal suit being filed for collection of the account" and it "could result in our forwarding this account to our attorney with direction to continue collection efforts." Brown never made payment arrangements, CSC never sued and so twelve months later she filed suit in Federal Court on behalf of herself and other similarly situated Pennsylvania consumers claiming the letter violated the FDCPA because CSC never intended to file suit or refer the debt to an attorney after the five day deadline. As such, Brown contended the demand letter was "false and misleading," and she sought damages and attorney's fees under the FDCPA.

Though the trial court dismissed her case, the Third Circuit of Appeal reinstated the action, citing the remedial nature of the FDCPA and Congress's intent to wipe out misleading or harassing collection efforts in the consumer context.

The case has potentially far-reaching implications for a number of reasons. First, the FDCPA entitles the prevailing consumer to an award of damages of \$1,000 per violation (in this case, per offending letter), plus attorney's fees and consequential damages. Second, the ruling is also notable because the Third Circuit discussed the standard of what constitutes a "false and misleading statement" from the perspective of the least sophisticated debtor. The least sophisticated standard is lower than the "reasonable debtor standard" and therefore, according to the Third Circuit, a communication that would not deceive or mislead a reasonable debtor might still deceive or mislead the least sophisticated debtor." Third, because most debt collectors, (including lawyers who can be considered debt collectors under the FDCPA), routinely rattle their proverbial sabers by threatening suit, while trying to collect a debt, *Brown* may mean that a debt collector won't be able to threaten suit unless he actually follows through.

This may be an overly expansive view of the case since there is a suggestion in the *Brown* case that CSC never actually ever followed through on its threats to sue or to even refer the debt to an attorney for collection. Instead, CSC allegedly only referred its uncollected

debts to another collection agency. Absent these egregious circumstances, *Brown* may not apply. It is also important to note that the ruling in *Brown* only applies to third party debt collectors (and not companies that collect their debts themselves.) And in the case of third party debt collectors, *Brown* and the FDCPA only apply to consumer debts and not commercial disputes.

Nonetheless, the ruling in *Brown* is a lesson in "coulda, woulda and shoulda" to all debt collectors, including lawyers who send demand letters on behalf of clients. For this reason, we urge you to have one of our attorneys review any demand letters or other collection efforts your company utilizes.

For more information or to register for the firm's November 30, 2006 in-house seminar on the *Brown* decision and other tips for improving your company's collections contact Thomas A. Muccifori, Esquire, Chair of Archer & Greiner's Commercial Collections and Consumer Litigation Practice Group, at [tmuccifori@archerlaw.com](mailto:tmuccifori@archerlaw.com) or (856) 354-3056.