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[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises a broad range of law firms, and collection agencies

regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

Sixth Circuit Expands Standing under the FDCPA

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In a 2-1 decision, the Sixth Circuit recently held that the definition of "person" under the FDCPA includes business entities, including corporations and limited liability companies for purposes of 15 U.S.C. §1692k. *Anarion Investments LLC v. Carrington Mortgage Services, LLC*, C.A. Nos. 14-5781, 14-5993, 2015 U.S. App. LEXIS 12670, 2015 Fed App. 0159P (6th Cir. 2015). The underlying litigation arose out of a foreclosure. Anarion Investments, the assignee of a lessee with an option to purchase the foreclosed residential real estate, brought suit alleging that the mortgage company made certain misrepresentations in the foreclosure notices and that the foreclosure notices did not provide sufficient notices to interested parties, including Anarion as the assignee of the lessee. Anarion alleged that these misrepresentations gave rise to the FDCPA claim.

The district court dismissed Anarion's suit, holding that Anarion did not have standing under the FDCPA. In doing so, the district court focused on three provisions of the FDCPA: (a) 15 USC §1692a; (b) 15 U.S.C. §1692d; and (c) 15 U.S.C. §1692k. The district court noted that a "consumer" is defined as being "any natural person obligated or allegedly obligated to pay any debt"; meanwhile, "debt" is defined as being "any obligation or alleged obligation of a consumer" incurred for personal, family, or household purposes." Section 1692d prohibits a debt collection from engaging in "any conduct the natural consequence of which is to harass, oppress, or abuse *any person* in connection with the collection of a debt." (emphasis supplied). Section 1692k, which provides the private right of action, in turn states that "[e]xcept as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to *any person* is liable to such person..." *Anarion Invs., LLC v. Carrington Mortg. Servs.*, 33 F. Supp. 3d 927, 932 (M.D. Tenn. 2014). The district court held that the meaning of "person" within Sections 1692d and 1692k did not extend to corporate plaintiffs and therefore, held that Anarion lacked statutory standing to sue under 15 U.S.C. §1692k.

On appeal, the sole issue was "whether Anarion is a "person" under 15 U.S.C. §1692k" and, therefore, had standing to assert an FDCPA claim. *Anarion*, 2015 U.S. App. LEXIS 12670, *1. The appellate court in reversing the district court relied upon the federal Dictionary Act, which provides that the presumptive meaning of the word "person" includes artificial entities unless the context indicates otherwise. In reviewing the FDCPA

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

(and apparently ignoring the statutory's purpose), the appellate court relied upon the fact that several places within the FDCPA included artificial entities within its definition of person – for example, “creditor” and “debt collector” routinely include artificial entities. Based upon these observations, the court held that the term “person” in 15 U.S.C. §1692k was broad enough to include corporate entities.

The opinion is troublesome and runs counter to the FDCPA's purpose; however, it has limited application. While the court clearly missed the mark in not noting that the references to artificial entities were all outward facing and did not involve parties protected by the Act and ignored the FDCPA's purpose and history, the opinion is likely to be an outlier because the FDCPA only applies to consumer debts. So how was the debt, in this case, considered a consumer debt when Anarion so clearly did not meet the definition of a consumer? Because the underlying debt was a mortgage of residential real property incurred by an individual who ultimately leased the property to Anarion's assignor, the underlying debt was a “debt” as defined by the Act. Again, a fairly unusual situation that is not likely to occur. Moreover, while the court expanded the definition of “person” under 15 U.S.C. §1692k to include artificial entities, it was quick to point out that its opinion was limited solely to the narrow issue of who was a person for purposes of section 1692k. “Left unanswered, among other questions, is the question whether any of defendants' representations were made “with respect to” Anarion, as required for relief under §1692k(a) of the Act.” *Anarion*, 2015 U.S. App. LEXIS 12670, *6.

Despite all of the limitations on the opinion's application, the court's decision is, as described the dissent, “cavalier” in response to a very real concern and “potentially opens the door to a new class of plaintiffs under the FDCPA and effectively provides a new cause of action in foreclosure appeals.” *Id.* at *16.

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