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ABOUT THE AUTHOR



[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 fintech companies, 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

Court Holds That Consumers Cannot Engineer FDCPA Violations

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A Missouri district court has refused to grant partial summary judgment in favor of a consumer who asserted violations of 15 U.S.C. 1692e(11). In *Dodd v. Delta Outsource Group*, the consumer, who was employed as a collector by another debt collector, received two calls from the collection agency while at work. A week later, the consumer filed suit asserting violations of the FDCPA, including violations of section 1692e(11), contending that the collector failed to disclose the communications were from a debt collector. In support of his motion for partial summary judgment, the consumer submitted recordings of both calls.

Section 1692e(11) provides that:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt... [including]... The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector...

In opposition to the motion, the debt collector asserted that: [a] the consumer admitted in his deposition testimony that he knew Delta Outsource Group was a debt collector; and [b] it could not be held liable for its failure to disclose when the consumer interrupted the collector in both calls, preventing him from making the disclosure." The court denied summary judgment agreeing with the debt collector that a question of fact remains as to whether the debt collector violated the FDCPA. In doing so, the court cited with favor a 2015 Utah district court decision where the court held that "the FDCPA does not entitle a plaintiff "to disrupt a collection call, prevent the debt collector from making its required identifications and disclosures, end the call, and through his own actions, create a violation of the FDCPA on the part of the debt collector." *Dodd v. Delta Outsource Group*, C.A. No. 4:15-cv-1744 (E.D. Mo. Aug. 25, 2016) quoting *Lauer v. Credit Control Services*, 2015 WL 5824941 (D. Utah Oct. 6, 2015). The court concluded that the

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.

FDCPA penalizes a failure to disclose, but it does not reward a debtor's actions to prevent that disclosure.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541