What We Know

ARTICLES & INSIGHTS

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 financial services and has

Sixth Circuit Holds Consumer Has No Standing to Bring FDCPA Claim

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The Sixth Circuit recently made clear its position that "Congress cannot override the baseline requirement[s] of Article III of the U.S. Constitution by labeling the violation of *any* requirements of a statute a cognizable injury." In *Hagy v. Demers & Adams,* 2018 U.S. App. LEXIS 3710, 882 F.3d 616 (6th Cir. 2018), a letter from a law firm advising the consumer that the creditor would not seek recovery of the deficiency balance resulted in an FDCPA claim. The alleged violation? The letter violated the 15 U.S.C. §1692e(11) because it did not disclose the communication was from a debt collector.

The letter read as follows:

> **This letter is in follow up to our conversation of Monday, June 28, 2010, wherein we discussed the above-referenced matter.**
>
> **Pursuant to our conversation, I informed you that we have received the executed Warranty Deed in Lieu of Foreclosure signed by the Hagy[s]. Furthermore, you inquired as to should a deficiency balance be realized after the sale of the collateral would Green Tree pursue Mr. & Mrs. Hagy for the amount of the deficiency. I have been informed by my client that in return for Mr. & Mrs. Hagy executing the Warranty Deed in Lieu of Foreclosure Green Tree will not attempt to collect any deficiency balance which may be due and owing after the sale of the collateral.**
>
> **I believe this letter satisfies any and all of your concerns.**
>
> **Should you have any questions with respect to this matter, please do not hesitate to contact me.**
>
> ***Hagy* at *7-8.**

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.

As acknowledged by the consumers, the letter was accurate and, "[f]ar from causing the Hagys any injury, tangible or intangible, the… letter gave them peace of mind…" Importantly, there were no allegations that the consumers suffered actual injury or damages from the letter.

The issue on appeal was whether Congress' creation of a statutory injury and damages pursuant to 15 U.S.C. §1692e(11) satisfied Article III's requirement of an injury in fact. The court held that it did not. In doing so, the court refused to endorse an 'anything-hurts-so-long-as-Congress-says-it-hurts theory' of Article III and further rejected the Eleventh Circuit's rationale in *Church v. Accretive Health, Inc.*- that a bare violation of section 1692e(11) is sufficient to create standing. Looking to the legislative record and the FDCPA, the court found no finding by Congress that the failure to disclose the communication was from a debt collector *always* creates injury. The court concluded that "[a]lthough Congress may 'elevate' harms that 'exist' in the real world before Congress recognized them to actionable legal status, it may not simply enact an injury into existence, using something that is not remotely harmful into something that is." *Hagy* at *11. The court's opinion emphasizes the limitations of statutory violations and the importance for defense counsel to continue to analyze bare statutory violations against the Article III minimum standing requirements. At a minimum, the court's opinion should provide debt collectors with some solace against the absurd.

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