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## Collection Letters Must Clearly Convey Validation Notice

Law360, New York (March 11, 2013, 12:48 PM ET) -- Recently, in *Caprio v. Healthcare Revenue Recovery Group LLC*[1], the Third Circuit clarified the law on validation notices required under the Fair Debt Collection Practices Act (FDCPA), emphasizing that debt collectors must not only adhere to technical statutory requirements, but they must also effectively convey such notice to unsophisticated consumers.

The court found in *Caprio* that, despite the debt collector's inclusion of the statutorily required validation notice language on the back of its collection letter, such notice was not effectively conveyed to the consumer because the language on the front of the collection letter overshadowed and contradicted the validation notice. Applying the "least sophisticated consumer" standard, the court concluded that contradictory language in the collection letter could lead an unsophisticated consumer to be uncertain about his statutory right to dispute the debt.

### FDCPA's Content Requirements for Validation Notices

The FDCPA's "Validation of Debts" provision[2] governs the content of validation notices which debt collectors must provide to consumers within five days after an initial communication in connection with the collection of any debt. A validation notice must include:

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.[3]

### Background of the Caprio Case: The Collection Letter

Plaintiff Ray Caprio, on behalf of himself and a putative class, brought suit against Healthcare Revenue Recovery Group LLC (HRRG) for violating the “Validation of Debts” provision[4] of the FDCPA. The debt collector, HRRG, sent a collection letter to plaintiff on Dec. 7, 2010, in an attempt to collect debt owed to his original creditor.

At issue was language in the second paragraph of HRRG’s collection letter which provided: “If we can answer any questions, or if you feel you do not owe this amount, please call us toll free at 800-984-9115 or write us at the above address.”[5] Following this language was a disclosure that the letter was “an attempt to collect a debt,” and included a notice, in all caps, which stated: “(NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.)” The reverse side of HRRG’s collection letter contained the statutorily required validation notice informing the consumer that he must dispute the validity of the debt, in writing, within 30 days.

Because the letter contained both an instruction to call, as well as an instruction to dispute the validity of the debt in writing, Caprio contended that HRRG’s collection letter violated the FDCPA. The argument advanced was that the letter deceptively and incorrectly could lead an unsophisticated consumer to believe that he could dispute the validity of the debt by either calling HRRG at the toll free number or by writing to HRRG at the address in the letter.

Caprio contended that the collection letter also violated the “False or Misleading Representations” provision[6] of the FDCPA by providing language that misrepresented to an unsophisticated consumer that he could either call or write to the debt collector to effectively dispute the debt, when in fact the FDCPA requires the consumer to dispute such debt in writing in order for the dispute to be effective.

The district court granted judgment on the pleadings in favor of HRRG finding that the validation notice, contained on the reverse side of HRRG’s collection letter, satisfied the FDCPA. The Third Circuit vacated this judgment and remanded the matter to the district court.

### **The Third Circuit’s Decision: Effective Communication of Validation Notice Required**

In analyzing whether HRRG’s collection letter to Caprio violated the FDCPA, the court first reiterated the FDCPA’s requirement that a consumer’s dispute of a debt must be in writing in order to be effective. Once a consumer effectively disputes the debt in writing, a debt collector must cease all collection efforts until the debt collector mails either the verification of debt or copy of a judgment to the consumer.[7]

The court observed that Congress adopted the FDCPA’s debt validation provisions to guarantee that consumers have adequate notice of their right to dispute an alleged debt. [8] The court emphasized that the FDCPA’s debt validation provisions are aimed at both eliminating abusive debt collection practices and preventing debt collectors, who lawfully refrain from abusive practices, from facing a competitive disadvantage.[9]

Given this congressional purpose of guaranteeing consumers adequate notice, the court found that it is not only important for debt collectors to include the required statutory language in validation notices, but also to ensure that the validation notice is communicated effectively to the unsophisticated consumer.[10]

The court applied the “least sophisticated consumer standard” to review HRRG’s collection letter and to determine whether the validation notice contained in the letter complied with the FDCPA. The court distinguished the least sophisticated consumer standard from a mere “reasonable person” standard, noting that the least sophisticated consumer standard is

less demanding than one that inquires whether a mere “reasonable person” would be misled.[11]

The least sophisticated consumer standard, the court noted, was designed to protect naïve, unsophisticated consumers.[12] The court explained that this lower standard, traditionally applied in consumer protection law, was intended to “protect all consumers, the gullible as well as the shrewd.”[13] The court found that a validation notice violates the FDCPA where such notice is overshadowed or contradicted by other language in a collection letter that would make the least sophisticated consumer uncertain as to his rights.[14]

Applying the least sophisticated consumer standard, the court then evaluated the substance and form of HRRG’s validation notice to Caprio, concluding that the language contained in the collection letter (inviting the consumer to call HRRG) overshadowed and contradicted the validation notice, and therefore violated the FDCPA.[15] As to the substance of the letter, the court observed that the emphasized “please call” language in paragraph two of the letter would lead a least sophisticated consumer to believe that he could either call or write to dispute the debt, as if calling were a reasonable alternative to disputing the debt in writing.[16]

As to the form of the letter, the court observed that the “please call” language and toll free number, both appearing in bold, overshadowed the alternative instructions to dispute the debt in writing by sending a letter to HRRG’s mailing address, which was not equally bold and only appeared in smaller font in the collection letter’s letterhead.[17]

Though HRRG’s collection letter contained no threats or encouragement for the consumer to waive his statutory right to challenge the validity of the debt, the court reasoned that the overshadowing of the telephone call option, as compared with disputing the debt in writing, would make it appear to an unsophisticated consumer that he could effectively dispute the debt by taking “the easier — but legally ineffective — alternative of making a toll-free call to dispute the debt instead of going to the trouble of drafting and then mailing a written dispute.”[18]

Thus, the court concluded HRRG’s collection letter was deceptive because the letter could have been reasonably susceptible to two different meanings, one of which inaccurately implied that a consumer could effectively dispute the debt by making a telephone call to the debt collector.[19] This would lead an unsophisticated consumer to be uncertain as to his rights, and therefore violated the FDCPA.

The Third Circuit’s ruling in Caprio is a reminder to debt collectors that, even where the technical requirements of the FDCPA are met, a debt collector must be sure that its notices to consumers do not cause any confusion to the very consumers that the statute was designed to protect.

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[1] 2013 U.S. App. LEXIS 4221 (3d Cir. Mar. 1, 2013).

[2] 15 U.S.C. § 1692g.

[3] 15 U.S.C. § 1692g(a).

[4] 15 U.S.C. § 1692g.

[5] 2013 U.S. App. LEXIS 4221, at \*2 (emphasis in original).

[6] 15 U.S.C. § 1692e.

[7] 15 U.S.C. § 1692g(b).

[8] 2013 U.S. App. LEXIS 4221, at \*9-10

[9] *Id.* at \*10

[10] *Id.* at 11.

[11] *Id.* at 13.

[12] *Id.* at 20.

[13] *Id.* at \*12-13.

[14] *Id.* at 14.

[15] *Id.* at \*21-22.

[16] *Id.* at 20-21.

[17] *Id.* at 21.

[18] *Id.*

[19] *Id.* at 21-22.