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## Seventh Circuit Adopts CFPB Position On Time-Barred Debt, Creating Circuit Split

By *Scott M. Pearson* and *Carrie P. Price*

The push to restrict collection of old debts is gaining steam. On March 11, 2014, the Seventh Circuit reversed dismissals of two federal Fair Debt Collection Practices Act (FDCPA) claims that challenged dunning letters offering to “settle” debts that were subject to a statute of limitations defense. Although the court made clear that it is not “automatically improper . . . to seek repayment of time-barred debts,” it found that offers to “settle” a debt may falsely suggest that the debt is legally enforceable, and thereby support claims under the FDCPA at least at the pleading stage. *McMahon v. LVNV Funding, LLC*, and *Delgado v. Capital Mgt. Servs., LP*, Nos. 12-3504, 13-2030, 2014 WL 929358 (7th Cir. Mar. 11, 2014).

Because the Third and Eighth Circuits previously held that dunning letters seeking to collect time-barred debts do not violate the FDCPA unless they threaten litigation, there is now a split in the circuits and a possibility of Supreme Court review. Notably, both the Federal Trade Commission and the Consumer Financial Protection Bureau filed amicus briefs in *McMahon*; they also have done so in a pending Sixth Circuit case, *Buchanan v. Northland Group, Inc.*, No. 13-2523 (br. filed Mar. 5, 2014).

As we predicted last year, debt collection practices are now one of the principal areas of focus for state and federal regulators, state Attorneys General, and the plaintiffs’ class action bar. More class actions and enforcement actions are coming. It therefore is essential for both debt collectors and debt owners to carefully scrutinize their debt collection communications with the current environment in mind.

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