



August 29, 2014

## IDAHO ISSUES GUIDANCE TO COLLECTION AGENCIES ON FEES

The Idaho Department of Finance recently issued guidance to collection agencies operating in Idaho with respect to the Idaho Supreme Court's ruling in *Medical Recovery Servs., LLC v. Strawn*, 321 P.3d 703 (2014). Under the guidance, the Department interprets the *Strawn* case as establishing that the term "principal obligation," as used in Section 26-2229A of the Idaho Collection Agency Act, never includes "any interest or other charges, fees, or expenses," however labeled, and therefore, such charges always are "incidental" to the principal obligation. Thus, to comply with the Act, the guidance states that it is the Department's position that no collection agency, including debt buyers, operating in Idaho, may lawfully collect, or attempt to collect, "any interest or other charges, fees, or expenses," no matter how labeled, against an Idaho debtor that are incidental to the debtor's principal obligation, without first qualifying to do so by application of one or more of the exceptions set forth in Section 26-2229A(4).

The *Strawn* case considered Section 26-2229A(4) of the Act, which prohibits a collection agency licensee, or collection agency required to be licensed under the Act, or agent of such collection agency, from collecting or attempting to collect any interest or other charges, fees or expenses incidental to the principal obligation unless such interest or incidental fees, charges or expenses meet one of the requirements set forth in Section 26-2229A(4)(a)-(e) (*e.g.*, are expressly authorized by statute, allowed by court ruling, etc.). The case, as summarized in the guidance, involved debtors who, at the time of receiving medical services from a medical provider, signed a form which included a provision that provided not only agreement to pay the debtor's account for medical services, but also to pay, among other things, a reasonable attorney's fee of the greater of \$350 or 35% of the principal and interest on the debtor's account balance if the account was assigned to a collection agency and suit was filed to recover payment. The debtors did not make payment and their account was assigned to a collection agency that filed suit to recover payment on the account, along with \$350 in attorney's fees. The trial court granted default judgment for the collection agency, but disallowed the attorneys' fees, allowing a reduced amount. On appeal, the Idaho Supreme Court upheld the ruling, holding that "principal obligation" was the amount debtors owed for

services and that the attorneys' fees are subordinate to the debt and thus "incidental to the principal obligation" under Section 26-2229A(4).

The guidance provides that it is the Department's interpretation that the *Strawn* case stands for the proposition that unless one or more of the exceptions enumerated in Section 26-2229A(4) are met, collection agencies may not collect, or attempt to collect, from Idaho debtors anything incidental to the "principal obligation." The "principal obligation" in the *Strawn* case was limited to the money the debtors owed the medical service provider and the attorneys' fees were subordinate to that debt and thus, "incidental to the principal obligation" for purposes of Section 26-2229A. The Department's position is that the reasoning in *Strawn* applies equally to other types of fees or charges, however labeled, that are subordinate to the debt and thus "incidental to the principal obligation."

The guidance advises collection agencies to consult legal counsel before claiming application of any of the exceptions listed in Section 26-2229A(4). The guidance also notes that during its compliance examinations, the Department will apply the *Strawn* court's reasoning by reviewing the character and nature of debts that collection agencies are collecting, or attempting to collect, from Idaho debtors. The guidance warns that collection agencies, including debt buyers, collecting from Idaho debtors must be able to substantiate to the Department the legal basis underlying attempts to collect fees or charges, however labeled, that are subordinate to the debt and thus "incidental to the principal obligation." The Department will apply the *Strawn* court's definition of "principal obligation" (*i.e.*, what the debtor owed to the creditor for the product(s) or service(s) provided). In other words, the guidance provides that the "principal obligation" would be equal to the cash price that would have been paid had the debt been paid immediately by the debtor. All charges and fees, however labeled, that are subordinate to the debt, even when included in the creditor's written contract with the debtor, including, but not limited to, attorneys' fees, collection fees or service charges, will be deemed incidental to the "principal obligation" for purposes of applying the provisions of Section 26-2229A(4). □

✧ *Mike Tomkies and Margaret Stolar*

Darrell L. Dreher  
ddreher@dtlaw.com

Judith M. Scheiderer  
jscheiderer@dtlaw.com

Elizabeth L. Anstaett  
eanstaett@dtlaw.com

Charles V. Gall  
cgall@dtlaw.com

Emily C. Barlage  
ebarlage@dtlaw.com

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
WWW.DTLAW.COM

To see all previously sent ALERTS, visit our website at [www.dtlaw.com](http://www.dtlaw.com)

To decline future ALERTS, please contact us at [ALERTS@DTLAW.COM](mailto:ALERTS@DTLAW.COM).  
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies  
mtomkies@dtlaw.com

Margaret M. Stolar  
mstolar@dtlaw.com

Robin R. De Leo  
robin@dreher-la.com

Susan L. Ostrander  
sostrander@dtlaw.com

Susan M. Manship  
smanship@dtlaw.com